MHCC040113312022

BOMBAY CITY CIVIL COURT, BORIVALI DIVISION
AT DINDOSHI, GOREGAON, MUMBAI

NOTICE OF MOTION NO. 4058 OF 2022
IN
S. C. SUIT NO. 1001 OF 2013

Mr. Rakesh Parmatmanath Tiwari …Plaintiff

VERSUS

Mr. Indresh Parmatmanath Tiwari …Defendant

Advocate Shri. J. N. Jayale for the Plaintiff.
Advocate Shri. O. R. Tiwari for the Defendant.

CORAM : SHRI. BALASAHEB D. PAWAR
Judge City Civil Court,
Borivali Division, Dindoshi, Mumbai.
(Court Room No.4)
DATE : 02nd July, 2025

:: O R D E R ::

1. Read the Notice of Motion and reply filed by the plaintiff. Heard Advocate Shri.O.R. Tiwari for the defendant and Advocate Shri.J.N.

Jayale for the plaintiff.

2. Advocate Shri.Tiwari for the defendant submitted that this Notice of Motion is filed for setting aside ex-parte order dated 11.01.2013 and to set aside orders passed in the Notice of Motion Nos.3628/2019 and 147/2020.

3. Advocate Shri.Tiwari submitted that on 11.01.2013 ex-parte order passed against the defendant. Since the defendant suffers from illness, he authorized his daughter to file the Notice of Motion to set aside the order dated 11.01.2013. Accordingly, daughter of defendant filed the Notice of Motion No.3628/2019. However, since the documents of Power of Attorney and medical certificate of defendant was not filed on the record, the Notice of Motion No.3628/2019 came to be rejected vide order dated 03.01.2020. Thereafter, defendant filed Notice of Motion No.147/2020. However, due to Covid Pandemic the defendant could not appear in the Court and tender registered Notice of Motion in the Court. Due to it, the Notice of Motion came to be dismissed in default.

4. Advocate Shri.Tiwari submitted that valuable rights of the defendant are involved in this case. The defendant is a Cancer patient. Due to it, he could not remain present in the Court. Notice of Motion No.3628/2019 was rejected on technical ground of non-production of documents of Power of Attorney and medical certificate while the Notice of Motion No.147/2020 was dismissed in default. Hence, by allowing this Notice of Motion the order dated 11.03.2020 be set aside.

So also orders passed in Notice of Motion Nos.3628/2019 and 147/2020 be set aside and Written Statement of defendant be taken on record.

5. Advocate Shri.Jayale for the plaintiff submitted that Notice of Motion No.3628/2019 was rejected on the ground that defendant failed to explain the delay caused in filing the Notice of Motion for setting aside ex-parte order. Defendant has not challenged the order by filing appeal against it. This Court cannot recall order whereby the Notice of Motion was rejected. Advocate Shri.Jayale further submitted that the Notice of Motion No.147/2020 is dismissed as defendant failed to tender the registered Notice of Motion in the Court. There are no sufficient reasons for condoning the delay. Therefore, the Notice of Motion be rejected.

6. I have gone through the Roznama of the case. Ex-parte order is passed on 11.06.2013 and not on 11.01.2013 as stated by the defendant in the Notice of Motion. I have gone through the order dated 01.03.2020 passed in Notice of Motion No.3628/2019. The Notice of Motion is rejected not only on the technical ground that there is no documents of Power of Attorney and documentary evidence in respect of the Notice of Motion. It is also rejected on the ground that the defendant failed to show sufficient cause for the delay of 1921 days in filing the Notice of Motion.

7. Defendant has not challenged the order whereby Notice of Motion No.3628/2019 is rejected. Instead, the defendant filed another

Notice of Motion No.147/2020. It appears that defendant failed to prosecute the said Notice of Motion and it is dismissed in default.

8. Notice of Motion No.147/2020 is dismissed on 27.09.2021. Defendant has not challenged the said order by filing appeal. Instead, the defendant has filed this Notice of Motion for setting aside the ex-parte order and to set aside orders passed in the Notice of Motion Nos.3628/2019 and 147/2020. The defendant has not mentioned period of delay in filing present Notice of Motion. Since the order in Notice of Motion No.3628/2019 has attained the finality, this Court cannot recall it. Defendant is not diligent in proceeding the matter. In such circumstances, I am of view that the Notice of Motion is liable to be rejected. Hence, I pass the following order -

ORDER

1. Notice of Motion No.4058 of 2022 is rejected.
2. Parties to bear their own costs.
3. Notice of Motion No.4058 of 2022 is disposed off.

PAWAR BALASAHEB DATTOBA
Digitally signed by PAWAR BALASAHEB DATTOBA
Date: 2025.07.03 11:28:55 +0530

(B. D. PAWAR)
Judge City Civil Court,
Date : 02.07.2025 Borivali Div, Dindoshi, Mumbai.

Dictated on : 02.07.2025
Transcribed on : 02.07.2025
Checked & Signed by HHJ on : 02.07.2025

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER." **03.07.2025** at **11:28 A. M.** UPLOAD DATE AND TIME	Ms. Mayuri A. Manjrekar Stenographer (Grade-I) NAME OF STENOGRAPHER
Name of the Judge (With Court Room Number)	**SHRI. BALASAHEB D. PAWAR** **Court Room No.4**
Date of Pronouncement of JUDGMENT/ ORDER	**02.07.2025**
JUDGMENT/ORDER signed by P.O. on	**02.07.2025**
JUDGMENT/ORDER uploaded on	**03.07.2025**