

MHRG010029272019



M.C.A. No. 78/2019
The State
Vs.
Navinkumar.

ORDER BELOW EXH.06

This is an application filed by the respondent for setting aside ex-parte order.

02. It is contended by the respondent that R.C.S No. 95/2015 was filed by the respondent through his power of attorney holder and the notice was served on the employee as the power of attorney holder was not present. The said employee did not inform about the notice to the power of attorney holder or the respondent. On 18/01/2023 Adv. S.Y.Bartake noticed that ex-parte order is passed against the respondent and he inform the respondent accordingly. Thus, the respondent was not aware about the service of notice and hence he could not appear before the court. Hence, it is prayed that ex-parte order be set aside and opportunity be given to contest the appeal by filling reply.

03. The appellant filed say and resisted the application. It is contended that the notice is served upon the respondent in March 2020 and ex-parte order came to the passed on 21/09/2022. The reasons for setting aside ex-parte order are

not valid and just. Hence, it is prayed that the application be rejected.

04. Heard both the advocates and perused the record. As per bailiff report at Exh. 5 the notice is served on the manager of the respondent on 21/09/2020. Thereafter on 21/09/2022 ex-parte order is passed as the respondent failed to appear.

05. It is contention of the respondent that his employee did not inform about the notice and he came to know from his advocate that ex-parte order is passed. It can be seen that the respondent has filed R.C.S No. 95/2015 before the C.J.S.D, Alibag for the perpetual injunction against the appellant and the learned trial court allowed temporary injunction application at Exh. 5. The appellant has challenged the said order in present appeal. Thus, when the order passed in favour of the respondent is challenged, the respondent will not deliberately avoid to appear in this matter. Therefore the reason shown for the respondent for not appearing appears bonafide and just. If the employee of the respondent informed about the notice, the respondent might have appeared in the matter.

06. Further, it is to be noted that ex-parte order is passed against the respondent on 21/09/2022 and present application is filed on 06/03/2023. Due to delay, inconvenience is caused the appellant. Hence, it is desirable to allow the application subject to the cost and I pass following order.

ORDER

1. The application at Exh.06 is allowed subject to cost of Rs. 2000/-.
2. The ex-parte order passed against the respondent on 21/09/2022 is set aside on payment of the cost.

Alibag,
Date :- 23/12/2024.

(N. K. Maner)
District Judge-2, Raigad-Alibag.