

IN THE SMALL CAUSES COURT AT MUMBAI
ORDER BELOW EXHIBIT NO.08
IN
R.A.E. SUIT NO.1455 OF 2015

Mrs. Shamsi Malek Malekpur]...Plaintiff

Versus

Pems Investments Pvt. Ltd.]...Defendant

D. J. Merchant, Ld. Advocate for Plaintiff

M/s. K. P. Tiwari & Co., Ld. Advocate for Defendant

Coram : Shri. K.P. Kshirsagar
Judge, Court Room No.15
Date : 04.05.2016

ORDER

1. This is an application filed by the defendant for setting aside the exparte hearing order dated 06.02.2016.

2. In short it is the case of the defendant's director that, for his business he is frequently required to go out of Mumbai for considerable period. Moreover, due to his domestic and business engagement he could not contact his advocate within time and he could not instruct him to take appropriate step in the matter. After returning from his business trip when he inquired with his advocate he got knowledge that exparte hearing order is passed on 06.02.2016. Due to above reason he could not remain present earlier. Defendant will suffer irreparable loss if the order is not set aside. Therefore, the defendant prayed that exparte hearing order dated 06.02.2016 be set aside and he may permitted to file the written statement on record.

3. Plaintiff opposed the application. It is the case of the plaintiff that, ex parte hearing order cannot be set aside on such false and flimsy excuses and concocted stories. Therefore, plaintiff submitted to dismiss the application.

4. Heard Ld. Counsel for the defendant and Ld. Counsel for the plaintiff at length.

5. Ld. Counsel for the plaintiff kept reliance on the following citations and I have gone through the same. All the citations are in regard of Order 8 Rule 1 of Code of Civil Procedure, 1908.

1. New India Assurance Co. Ltd. v/s. HILLI Multipurpose Cold storage Pvt. Ltd, SC dt.04.12.2015 CA 10941 of 2013
2. Iridium India Telecom Ltd. v/s. Motorola Inc, SC 2005(3) BCR 781 (SC) =2005(1) MhLR 821 (SC)
- 3) J.J.Merchant v/s. Shrinath Chaturvedi, SC dt.12.08.2002, 2003(1) BCR 24 = AIR 2002 SC 2931
- 4) Pandurang Dessai v/s. Beraldin Tawaeres, HC BOM (Goa Bench) dt. 20.10.2006 = 2007(1) BCR 296
- 5) Sameer Runwal v/s. Prakash Kothari, HC MP dt.30.04.2010 AIR 2010 MP
- 6) Iridium India Telecom Ltd v/s. Motorola Inc, BOM 2003 2004 (1) MhLJ 532 = 2004(1) ALL MAR 418 = 2004 (2) BCR 530
- 7) Anil Phutane v/s. Madhukar Phutane, HC BOM (Nagpur Bench) 2005, 2006(1)MhLJ 369=2006(1)BCR 786 = 2006(1) ALL MR 555 = AIR 2006 BOM 1

- 8) Prabhakar Mule v/s. Bhagwan Choudhari, HC BOM
(Aurangabad Bench)2003, 2004(2) MhLJ 1058=
2004(5) BCR 568
- 9) Kaluba Upare v/s. Rangubai Alole, HC BOM
(Aurangabad Bench)2003, AIR 2007 BOM 355 = 2007 (3)
MhLJ 624=2007(4) ALL MR 252
- 10) Sukhdeo Rai v/s. Ashok Rai, Guhavati HC 2004, AIR 2005
GAU 37 Ranjan Gagou J, WP(C) 462 of 2004 9 MAR 2004
- 11) Pundlik Kawarse v/s. Baban kawarse, 2006(3) ALL MR
683=2006(5) BCR 796
- 12) Basawaraj v/s. The Spl. Land Acquisition Officer, air 2014
SC 746=2013(5) ALL MAR 934
- 13) Arun Makhijani v/s. Jamnadas Tullani, 1989(1) LSSOFT
SC 63=1990(1)BOM CR SC 334

6. Perused the record. It reveals that, the summons was served to the defendant on 23.10.2015 and inspite of same defendant failed to appear and therefore exparte order dated 06.02.2016 that suit be heard exparte against defendant is passed. The present application is supported by the solemn affirmation of the director of the defendant and it is filed on next date of passing of the exparte hearing order. From the application there appears good cause for the previous non appearance of the defendant. Moreover, the suit is pertaining to valuable immovable property. Therefore, in order to give fair opportunity to the defendant to defend the suit it will be appropriate to set aside the exparte hearing order dated 06.02.2016. The delay and inconvenience caused can be compensated by awarding costs. Therefore,

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no prejudice will be caused to the plaintiff if the application is allowed. The defendant has already taken out separate application for condonation of delay in filing its written statement and for taking its written statement on record. Therefore, the prayer of the defendant that it be permitted to file written statement is not considered in this application. Therefore, in the interest of justice I pass the following order;

: ORDER :

1. The application is allowed.
2. The exparte hearing order against defendant dated 06.02.2016 is hereby set aside subject to payment of costs of Rs.1500/-to the plaintiff on or before next date.
3. Costs in cause.

K.P. Kshirsagar
Judge,
C.R. No.15

Date : 04.05.2016

Order dictated on : 04.05.2016
Order Transcribed on : 04.05.2016
Order Checked on : 23.05.2016
Order corrected on : 23.05.2016
Order signed on : 23.05.2016