

(1976) 10 BOM CK 0007

In the Bombay High Court

Case No : Civil Revision Application No. 218 of 1976

Krishnaji Mahadeo Bapat

APPELLANT

Vs

Wamanrao Balwantrao Shinde and Another

RESPONDENT

Date of Decision : 06-10-1976

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 3 Rule 4, Order 9 Rule 6

Citation : AIR 1977 Bom 36

Hon'ble Judges : Desai, J

Bench : Single Bench

Advocate : K.J. Abhyankar, for the Appellant; M.A. Rane, for the Respondent

Judgement

Desai, J.—This revision is against the order of the learned District Judge, Ratnagiri, dated 3rd April, 1976, dismissing Miscellaneous Appeal No. 10 of 1975. That appeal was from the order of the Civil Judge, Junior Division, Khed, in Miscellaneous Application No. 4 of 1974. That application was filed by the defendant, against whom an ex parte decree has been passed on 29th June, 1974, for restoration of the suit for hearing on merits.

2. The suit was originally filed in the Court of the Civil Judge, Junior Division, Chiplun. Thereafter by an order of the District Court it was transferred to the Court of the Civil Judge, Junior Division, Khed. One Mr. Chitley, Advocate, had put in the Vakalatnama for the petitioner before me in the Court at Chiplun. The Court at Khed gave a notice of hearing to the said Advocate. On the day namely on 28th June 1974 both the Advocate and the petitioner remained absent. Evidence on behalf of the plaintiff was taken on affidavit. An affidavit of the Mukhtyar was filed. Issues were framed as the written-statement had already been filed and the suit was decided ex parte. On 3rd August 1974 the petitioner claims that he went to Khed to enquire about the further progress of the case and on coming to know what had transpired about the suit he made an application on the same day for setting aside the said ex parte decree.

3. Evidence was taken by the Civil Judge, Junior Division, Khed, who held that he was not satisfied with the explanation given by the petitioner as to his inability to attend the Court on the relevant date. Being aggrieved by the said decision the petitioner preferred an appeal which was dismissed by the learned District Judge.

4. The learned District Judge refers to Order 3, Rule 4 of the CPC and observes that the authority of the Advocate concerned would not come to an end merely by reason of the transfer of the suit from Chiplun to Khed. I am a little doubtful about the correctness of the legal position. All Vakalatnamas and appearances are filed for a particular Court. It is for a suit or the proceedings in that Court that the Advocate is authorised to and obliges himself to appear. Neither the client nor the advocate can be bound by that authority given with reference to a particular Court if the proceedings are transferred to a different Court. Here it is important that I am not talking about the place of the Court. For example, it would be correct to say that the authority would continue if the work of the Civil Judge, Junior Division, Chiplun, was to be attended to at Khed by the Civil Judge concerned there, because in that case the Civil Judge at Khed would have a dual capacity acting as Civil Judge both at Chiplun and Khed. But if the matter was to be transferred from one Court to a totally distinct Court, it appears to me that the application under authority in the Court by an Advocate would come to an end. However, it appears to me unnecessary to go deeper into the matter since on the facts before me, both the Courts below have taken an extremely harsh view against the petitioner. The finding of the Court is not that the petitioner was aware of the date and had deliberately chosen to remain absent. The finding only is that the petitioner was only aware of the transfer and thereafter did not take any steps to acquaint himself with the progress of the suit or appoint an Advocate to represent him at Khed. Merely on this footing I do not think that the ex parte decree ought to be sustained. Assuming that there is some negligence on the part of the Advocate or the party, such negligence would not disentitle him for an opportunity to defend the suit on merits provided an order can be made against him compensating the other side for the costs thrown away. It is true that the powers of this Court to interfere in revision with such orders are limited; but such powers have to be called into play when such orders are passed which shock the conscience of the Court. It appears to me that such ex parte decrees and orders dismissing the suit for default are being increasingly sought to be sustained merely on the ground that if the suit is restored, then the matter shown as disposed of and no longer lying in the Court will be restored on the file of the Court and perhaps included in the arrears of the Court. It is also important to note that by taking extensive evidence for such application more time is spent which could have been utilised to dispose of the suit itself.

5. In the result, the rule is made absolute, but the restoration will be on the following terms:--

"The petitioner will pay to the respondent the costs of the Miscellaneous Application, of the Misc. Appeal and of this revision petition as well as the costs

thrown away on 29th June, 1974, quantified in the aggregate at Rs. 350/-, before the date of effective hearing of the suit. Such payment of costs will be condition-precedent to the petitioner being allowed to further appear in the suit."

The petitioner through his Advocate also undertakes that he will file the Vakalatnama of some Advocate in the Khed Court on or before 15th November, 1976. I further direct the Khed Court to dispose of the suit as expeditiously as possible and in any case on or before 15th January, 1977. Records and proceedings and the writ be sent down forthwith.

6. Rule made absolute.