

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 877 OF 2015**

M/s. Omkar Developers & Ors.

..Petitioners

Vs.

Rakesh Ramesh Miraje

..Respondent

Mr. Shivaji Masal for the Petitioners

**CORAM : R. M. SAVANT, J.
DATE : 3rd FEBRUARY, 2015**

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 30-12-2014 passed by the Learned Civil Judge Senior Division, Sangli, by which order the application Exhibit 49 filed by the Defendant Nos.1 and 3 for setting aside the exparte order as also the application Exhibit 53 filed by the Defendant No.2 for the same relief came to be rejected.

2 In so far as the Defendant No.2 is concerned, the suit summons came to be served upon him in the year 2010. The Defendant No.2 is the Petitioner No.2 herein and is a partner of the Petitioner No.1 Omkar Developers. The Defendant Nos.1 and 3 are also the partners of Omkar Developers. In so far as the Defendant No.1 is concerned, the suit summons was sought to be served upon the Defendant No.1 by Registered A.D. Post, however the same was returned unclaimed. In so far as the Defendant No.3 is concerned, it appears that since the suit summons could not be served, the

Plaintiff had to take recourse to publishing the suit summons in daily news paper which was done and the suit summons was accordingly published in daily news paper “Pudhari” having circulation in Sangli. It is required to be noted that inspite of the publication in the local news paper and that to in the news paper Pudhari which has substantial circulation in Western Maharashtra, the Defendant No.3 did not file his appearance in the Suit. The Defendant No.2 inspite of service of suit summons in the year 2010 also did not file his appearance in the Suit.

3 The Trial Court therefore passed an order against the Defendants to proceed exparte against them. It is thereafter that the instant applications Exhibit 49 and Exhibit 53 came to be filed. The stand taken was that the Defendant No.1 has not been served with the suit summons and in so far as the Defendant No.2 is concerned, it was the case of the Defendants that in view of the fact that the Defendant No.2 had paid an amount of Rs.2,50,000/- to the Plaintiff, the Plaintiff had made the Defendant No.2 to believe that the Suit would not be proceeded against him. In so far as the Defendant No.3 is concerned, it is the case of the Defendants that the publication of the suit summons in the local newspaper was informed to the Defendant No.3 by a well wisher and it is pursuant thereto that the Defendants contacted each other and decided to file the applications for setting aside the said ex-parte order passed against them. The said applications Exhibit 49 and Exhibit 53 were opposed to

on behalf of the Plaintiff. The case of the Defendants was disputed by the Plaintiff.

4 The Trial Court considered the said applications Exhibit 49 and Exhibit 53 and has rejected the same by the impugned order dated 30-12-2014. The gist of the reasoning of the Trial Court was that the Defendant No.2 was served as along as back in the year 2010 and in so far as the Defendant No.1 is concerned, he was sought to be served on the address mentioned in the plaint and in so far as the said address is concerned, it is not the case of the Defendant No.1 that the address on which the suit summons was sent to him was not the address where he was residing or last known to the Plaintiff. In so far as the Defendant No.3 is concerned, the Trial Court refused to accept the case of the Defendants that it is a well wisher who had informed the Defendants about the publication of the suit summons in the local newspaper. The Trial Court observed that the Defendants have not disclosed the date when the said well wisher had provided the said information. The Trial Court accordingly has rejected the said applications Exhibit 49 and Exhibit 53.

5 The learned Counsel appearing on behalf of the Petitioners made a valiant attempt to extricate the Defendants from the situation they are faced with on account of the exparte order passed against them. The Learned Counsel would contend that the Defendants ought to be shown an indulgence may be by imposing costs.

6 In my view, it is not possible to accept the said contention urged by the Learned Counsel appearing for the Petitioners, however attractive it may seem to be. In the instant case, the facts indicate that the Defendants have concertedly refused to appear in the Suit though they were very much aware of the factum of the Suit being filed. It is pertinent to note that the Defendant No.2 is one of the partners of the Petitioner No.1 firm and therefore it is impossible to believe that the Defendant No.2 though served in the year 2010 has not informed the Defendant Nos.1 and 3 of the filing of the Suit, this is only one circumstance. The other circumstance is that the Defendant No.1 was sought to be served at the address which has not been disputed. In so far as the Defendant No.3 is concerned, he has been served by publication of the notice, which it seems was deliberately not taken cognizance of by the Defendant No.3 and therefore a stand is sought to be taken that a well wisher of the Defendant No.3 has informed about the publication of the notice. The case of the Defendants therefore for seeking setting aside of the order ex-parte does not inspire confidence. A Writ Court cannot show indulgence to such litigants who are only trying to stall the adjudication of the proceedings on merits. In that view of the matter, no case for interference in the Writ Jurisdiction of this Court is therefore made out. The Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]