

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.315 OF 2014

Mr. P. N. R. Babu.] ... Applicant/
(Orig. Defendant)

Versus

Siddhbahadur Singh.] ... Respondent/
(Orig. Plaintiff)

Mr. H. P. Pandey for Applicant.
Mr. Kashyap Patel for Respondent.

CORAM :- M. S. SONAK, J.
DATE :- JULY 20, 2015

P. C. :-

1. Rule.
2. With the consent of and at the request of learned Counsel for both the parties, Rule is made returnable forthwith.
3. This Revision Application challenges orders dated 04/02/2013 and 01/02/2014 made by the trial as well as Appeal Court refusing to set aside *ex-parte* decree dated 15/06/2012 made against the Petitioner in R.A.E. Suit No.1694 of 2007.

4. The records indicate that the Petitioner applied for setting aside the *ex-parte* decree dated 15/06/2012 on 03/12/2012. The delay is explained by the Petitioner by stating that the Petitioner came to know about the *ex-parte* decree after receiving the notice in the execution proceeding. The case of the Petitioner is that the summons in the R.A.E. Suit No.1694 of 2007 was never served upon the Petitioner and the signature upon the summons is not his. The Petitioner has made some allegations against the Bailiff. The two Courts, have dismissed the Petitioner's application seeking setting aside of the *ex-parte* decree and the appeal against the same on the ground that the Petitioner never applied for reference of the summons which purports to bear the signature, for the examination of a handwriting expert. Accordingly, two Courts have held that there is no reason to believe that the Applicant was not duly served with the process in the suit.

5. In the peculiar facts and circumstances, the Applicant, subject to payment of exemplary costs, deserves to be afforded yet another opportunity. The execution was obstructed by a person, other than the Applicant. The Applicant claims that such person, is a caretaker appointed by the Applicant. The Applicant states that he was away from the suit premises at the time when the summons was allegedly served. The signature on the summons is not his. Yet, the two Courts proceeded on the basis that the signature on the summons is of the Applicant. The application for setting aside of the *ex-parte* decree was made on 03/12/2012 i.e. hardly within six months from

the making of the *ex-parte* decree and no sooner the process in execution was served upon the Applicant. All these circumstances indeed indicate that if the summons in the suit were to have indeed been served upon the Applicant, the Applicant would have contested the suit on its merits. Circumstances do indicate that there is some merit in the contention of the Applicant in the matter of service. No doubt, this exercise is bound to occasion prejudice to the Respondent, who has been pursuing the execution of the *ex-parte* decree and has even taken out an obstructionist notice in the meantime. Such prejudice, can always be compensated by way of exemplary costs.

6. Accordingly, the following order is passed :-
- (a) The impugned orders dated 04/02/2013 and 01/02/2014 are set aside.
 - (b) The *ex-parte* decree dated 15/06/2012 in R.A.E. Suit No.1694 of 2007 is also set aside.
 - (c) The aforesaid, is subject to the Applicant depositing before the trial Court costs of Rs.50,000/- (Rupees Fifty Thousand Only) within a period of four weeks from today. In case the costs are not paid, this Civil Revision Application shall be deemed to have been dismissed.
 - (d) In case the costs are paid, the trial Court to proceed with R.A.E. Suit No.1694 of 2007 and dispose of the same as expeditiously as possible and in any case, within a period of one year from today.

- (e) The Applicant to cooperate in the matter of expeditious disposal and shall not apply for unnecessary adjournments. If the Applicant files Written Statement within four weeks from today, the trial Court to take the same on record.
- (f) Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

(M. S. SONAK, J.)