

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.8235 OF 2013

Shivajirao Shankar Jamdade

.. Petitioner

Versus

Indofil Chemicals Company

.. Respondent

Mr. Haribhau Deshinge, Advocate for the Petitioner.

CORAM : R.M. SAVANT, J.

DATE : 05th JANUARY, 2015

PC.

1. The writ jurisdiction of this Court is invoked against the order dated 05.04.2013 passed by the Learned 5th Joint Civil Judge, Senior Division, Pune by which order the application being Exh.39 filed by the Petitioner under Order 9 Rule 13 of the CPC came to be rejected. The Petitioner was the original Defendant in Special Summary Suit No.137of 2006. The Petitioner was arrayed as Defendant in the capacity of being the Proprietor of one "Omkar Sheti Seva Kendra", Manerajuri, Tal. Tasgaon, Dist. Sangli. It seems that when the summons was sought to be served on the Petitioner, his brother was present in the house who informed the postman that the Petitioner is not the proprietor of the said "Omkar Sheti Seva Kendra". The Postman therefore, returned the packet by making the following endorsement "refused to accept". The suit thereafter proceeded

ex-parte against the Petitioner and came to be decreed on 20th July 2011. It seems that thereafter the decree came to be modified pursuant to an application filed by the Plaintiff i.e. Respondent herein, of which application notice was received by the Petitioner. It is thereafter that the instant application being Exh.39 came to be filed by the Petitioner invoking Order 9 Rule13 of the CPC.. It was the case of the petitioner that at the time when suit summons was sought to be served on Petitioner, he was hospitalized and that he has nothing to do with the said Omkar Sheti Seva Kendra. In so far as the first ground is concerned, the Trial Court rejected the same on the ground that though the medical certificate was filed, the same contains erasures and therefore, could not be relied upon. In so far as the second ground is concerned, the Trial Court adverted to the fact that in the title of the application as well as in the verification clause, the Petitioner has been described as the proprietor of the said “Omkar Sheti Seva Kendra”. Hence, the Trial Court held that no case for setting aside the decree was made out under the provisions of Order 9 Rule 13 of the CPC.. As indicated above, the Trial Court has accordingly, rejected the application.

2. The learned counsel appearing on behalf of the Petitioner Mr. Haribhau Deshinge sought to reiterate the case of the Petitioner which were urged in the Trial Court. In my view, in the light of the findings

recorded by the Trial Court in respect of the two grounds which were pressed into service on behalf of the Petitioner the order passed by the Trial Court refusing to exercise jurisdiction under Order 9 Rule 13 cannot be found fault with. No case for interference is therefore, made out. The Writ Petition is accordingly, dismissed.

[R.M. SAVANT, J]