

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.675 OF 2013

Abdul Hamid Aboobaker Coatwala.	]	... Applicant
Versus		
1. Unknown Heirs and Legal Representative of]		
Late Mr. Haji Abdul Gani.	]	
2. Mr. Raees Qureshi.	]	... Respondents

Mr. Abdul Hamid Aboobaker Coatwala, Applicant, present in person.

CORAM :- M. S. SONAK, J.
DATE :- JUNE 24, 2015

P. C. :-

1. This Civil Revision Application challenges orders dated 09/07/2013 made by the Appellate Bench of the Small Causes Court at Mumbai reversing the order dated 16/02/2013 made by the Small Causes Court declining to set aside *ex-parte* judgment and decree dated 31/01/2011 passed in R.A.E. & R. Suit No.365/629 of 2009.

2. The Applicant, who appears in person, states that service has been complete upon the Respondents. The noting put up by the Registry also indicates that service has been completed. On 29/01/2015, this Court directed that this matter be placed for final hearing in the week commencing from 15/06/2015.

3. Mr. Coatwala, who appears in person, submitted that the summons in the suit which was instituted on 13/03/2009, was duly

served upon the Original Defendant No.2 (Respondent No.2 herein) on 21/05/2009. This is borne out by the Bailiff's report which is at page 119 of the paper-book of the present Civil Revision Application. Further, the Defendant No.1 was served by substituted service. The substituted service was by way of affixation of the summons upon the suit premises as also by publication. In such circumstances, Mr.Coatwala submitted that there was no reason for setting aside the *ex-parte* decree on the spacious leave that the Defendant No.1 Raees Qureshi had, on 08/01/2009, changed his name to 'Raees Rasool Rajpoot'. Mr. Coatwala submitted that the Small Causes Court had properly appreciated the matter and held that there was no serious doubt about service of summons to the Defendant No.2 and consequently, at the instance of original Defendant No.2, no case was made out for setting aside of *ex-parte* decree.

4. As noted earlier, the Respondents, despite service, have chosen not to remain present. In such circumstances, this Court proceeds to dispose of the Civil Revision Application finally.

5. The Applicant, cannot really be faulted for referring to Defendant No.2 as 'Raees Qureshi'. This is because there is no dispute that 'Raees Qureshi' and 'Raees Rasool Rajpoot' are one and the same person. Besides, the Bailiff's report which is at page 119 of the paper-book clearly indicates that the said Raees Qureshi was served with the summons in the eviction suit, which he duly accepted. At the stage of service of summons, the said Raees Qureshi did not protest or did not

decline to accept the summons on the ground that 'Raees Qureshi' is not his name any longer. In fact, the Small Causes Court, in para 15 of its order dated 16/02/2013, has correctly recorded that the signature of Defendant No.2 on the Bailiff's report and the signature of the Defendant No.2, as it appears upon the application seeking setting aside of the *ex-parte* decree, is identical. It is not even the case of the Defendant No.2 that Raees Qureshi and Raees Rasoor Rajpoot are two different persons. In such a situation, there is no question of the Defendant No.2 taking some undue advantage from out of a mere and at the highest, a technical irregularity. The material on record overwhelmingly establishes that the Defendant No.2, whether called as 'Raees Qureshi' or as 'Raees Rasool Rajpoot', was duly served with the summons in the eviction suit. There is no explanation in the application seeking setting aside of the *ex-parte* decree as to what really prevented the Defendant No.2 from attending the Court proceedings despite service of the summons. The application seeking setting aside of the *ex-parte* decree is also quite vague. There is categorical assertion with regard to non-service of summons. The case appears to be that the summons ought to have been served upon the Defendant No.2 in its changed name i.e. Raees Rasool Rajpoot.

6. Besides, in the application made by the Defendant No.2 seeking setting aside of the *ex-parte* decree, the Defendant No.2 has claimed that he is the legal heir of Mr. Haji Abdul Gani. In Appeal No.83 of 2013 which was instituted by the Defendant No.2, he has styled himself as Raees Qureshi. Both these documents are on record

of this paper-book at pages 145 and 148. The Appeal was instituted in March 2013 and the date of verification is 30/03/2013. This makes it clear that despite the so called change in name, the Defendant No.2 has chosen to style himself as Mr. Raees Qureshi. The Small Causes Court, had correctly appreciated the matter and refused to set aside the *ex-parte* decree on the basis of mere technical and trivial irregularity. The Appeal Court, without advertng to the substance of the matter, has reversed the Small Causes Court. Ultimately, in matters such as these, the Courts are expected to go by the substance of the matter and not mere form. The Appeal court has nowhere recorded a categorical finding that there was no service of summons upon the Defendant No.2. In fact, there is unrebutted material on record in the form of Bailiff's report that there was effective service of summons upon the Defendant No.2.

7. For all the aforesaid reasons, the impugned order dated 09/07/2013 made by the Appellate Bench of the Small Causes Court is set aside and the order dated 16/02/2013 made by the Small Causes Court is restored.

8. Rule is accordingly made absolute in terms of prayer clause (b).

9. In the facts and circumstances of the case, there shall be no order as to costs.

(M. S. SONAK, J.)