

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE SIDE JURISDICTION  
FIRST APPEAL NO.770 OF 2014  
WITH  
CIVIL APPLICATION NO.1280 OF 2014

Sadanam Personal Products Ltd. ... Appellant  
V/s.  
S. H. Kelkar & Co. Pvt. Ltd. ...Respondent

Mr. S. A. Oak i/b. Mr. Mahesh Menon & Co. for the Appellant.  
Mr. Akshay Bobde with Rohan Wagh Poorva i/b. M/s. Mulla & Mulla &  
CBC for Respondent No.1.

**CORAM: K.K. TATED, J.**  
**DATED : FEBRUARY 4, 2015**

**PC. :**

1. Heard the learned counsel for the parties. This appeal is preferred by the original Defendant challenging the judgment and decree dated 07/12/2012 passed by the Bombay City Civil Court in Summary Suit No.3761/2011 (High Court Suit No.1394/2011) holding that the Appellant is liable to pay Rs.18,07,554/- to the Respondent Plaintiffs along with interest @ 9% p.a.

2. The learned counsel for the Appellant submits that the Trial Court has passed exparte decree. He submits that the summons were not duly served on the Defendants. He further submits that the Trial Court did not appreciate the address of the Appellant Defendant mentioned in the plaint was not correct. He further submits that pursuant to the order passed by this court, the Appellant - Defendant deposited Rs.18,07,554/- in this court on 15/01/2015.

3. On the other hand, the learned counsel for the Respondent-original Plaintiff filed their affidavit-cum-undertaking dated 03/02/2015 stating that they have no objection if the impugned judgment and decree is set aside and the matter is remanded to the Trial Court for hearing on merits allowing the Appellant - Defendant to file written statement. It is also stated in the said affidavit-cum-undertaking that if the amount is permitted to be withdrawn, they undertakes to bring back the same, if the summary suit No.3761/2011 filed by them is dismissed by the Trial Court. Undertaking is accepted and taken on record and marked "X" for identification.

4. Hence, by consent, following order is passed:

a) The impugned judgment and decree dated 07/12/2012 passed by the Bombay City Civil Court in Summary Suit No.3761/2011 (High Court Suit NO.1394/2011) is set aside.

b) Liberty granted to the Appellant- Defendant to file their written statement within 6 weeks from today with copy to other side.

c) The Trial Court is directed to decide the Summary Suit No.3761/2011 (High Court Suit No.1394/2011) on merits, as early as possible but in any case on or before 31/12/2015.

d) Liberty granted to the Respondent Plaintiff to withdraw the amount deposited by the Appellant Defendant along with accrued interest, if any, as per their undertaking dated 03/02/2015.

e) The First Appeal is disposed off accordingly.

f) Refund of Court Fees as per Rules.

g) In view of disposal of the First Appeal, nothing survives in the Civil Application. Same stands dismissed as infructuous.

**(K.K. TATED, J.)**