

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3117 OF 2015

Banka Constructions and anr. .. Petitioners
vs.
State of Maharashtra and ors. .. Respondents

Mr. Devrat Singh a/w. Manali Khot, Dilip Kamath i/b Lawfin & Associates for the Petitioners.
Mrs. M.S. Bane, AGP for the State.

CORAM : M. S. SONAK, J.
DATE : 1 April, 2015.

P.C. :-

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The petitioners, i.e., the original plaintiffs before the learned Civil Judge, Senior Division, Sangli had instituted a Summary Suit under Order 37 of the Code of Civil Procedure, 1908 (CPC). The learned Civil Judge, Sangli, instead of issuing summons to the respondents-defendants in Form-4 in Appendix-B to the CPC, issued summons as applicable to routine suits. In pursuance of such summons, the respondents/defendants put in appearance before the learned Civil Judge, Sangli and applied for time to file a written statement.

3] The petitioners, realising that the summons in incorrect form had been issued to the respondents/defendants on 5 November 2014, brought this circumstance to the notice of the learned Civil Judge Sangli and applied for re-issuance of summons in Form-4 in Appendix B to the CPC. The learned Civil Judge, by the impugned order has declined to consider such application by observing that since defence have already appeared in the matter, such application is liable to be filed.

4] This is a clear case, where the learned Civil Judge has failed to exercise jurisdiction in the matter. The mistake in issuing summons, as if the suit instituted was a routine suit, was an obvious one. In such circumstances, the application made by the petitioners for issuance of summons in the proper form ought to have been considered and allowed.

5] Accordingly, the impugned order is set aside. The learned Civil Judge, Senior Division, Sangli is directed to issue summons on the basis that the suit instituted was a summary suit under Order 37 of the CPC. Such summons shall have to be issued in Form 4 in Appendix B to the CPC.

6] Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

7] The petitioners are authorized to produce an authenticated copy of this order before the learned Civil Judge, Senior Division, Sangli, who shall act upon the said basis.

(M. S. SONAK, J.)

dinesh