

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**CHAMBER SUMMONS NO. 891 OF 2012
IN
SUIT NO. 2031 OF 2003**

National Insurance Company Ltd. & Ors. .. Plaintiffs
Vs.
M/s. Penta Freight Pvt. Ltd. .. Defendant

Mr.A.M. Vernekar i/b Narichania and Narichania for plaintiffs.

Ms. Pallavi Bali i/b Bali Associates for defendant/applicant.

**CORAM : K.R.SHRIRAM, J.
DATE : 14TH SEPTEMBER, 2016**

P.C.

1 This chamber summons is taken out to condone the delay of 942 days and to recall the ex-parte decree passed by this Court on 5th November 2009 and permit the defendant to defend the suit.

2 Order 9, Rule 13 of the Code of Civil Procedure, 1908 provides that where a decree is passed ex-parte against the defendant, the defendant may apply to the Court for an order to set it aside and if he satisfies the Court that the summons was not duly served or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the Court shall make an Order setting aside the decree as against the said defendant upon such terms as to costs.

3 The counsel for the defendant states that the writ of summons was served upon the defendant. Therefore, what we need to consider is whether the defendant has shown that he was prevented by any sufficient cause from appearing when the suit was called on for hearing.

4 In the affidavit in support, in my view, no sufficient cause has been disclosed. It is stated in the affidavit in support that though the defendant had entered appearance after the writ of summons was served through an Advocate Shri P.M.A.Nair, who filed his Vakalatnama on 6th August 2003, they come to know about the ex-parte decree only on 26th April 2012 when the plaintiff forwarded the same through the plaintiff's Advocates. It is also stated that the defendant tried to contact Advocate Mr.P.M.A.Nair to find out how the ex-parte decree came to be passed but Mr.Nair was not found at his office address and his present whereabouts were not known. It is further stated that the defendant's representative was informed that Mr.P.M.A.Nair has not been practicing since the year 2006.

4 I fail to understand if Mr.P.M.A.Nair could not have been found at his office address and his present whereabouts are not known, how did the defendant come to know that Mr.Nair has retired and has not been practicing since the year 2006. There is no explanation, except, a bald statement.

Moreover, there is not a whisper anywhere in the affidavit as to what steps did the defendant take to give instructions to file the written statement between August 2003 when Mr.Nair is supposed to have filed his Vakalatnama until 26th April 2012 when the defendant came to know about the ex-parte decree. There is no mention whatsoever in the affidavit as to what steps the defendant took to contact Mr.Nair to file their written statement. The writ of summons mentions that the defendant should file their written statement/defence within 12 weeks of receiving the writ of summons. Therefore, it was incumbent upon the defendant to contact their advocate and to give instructions to file the written statement within 12 weeks period. The defendant seems to have done nothing.

5 In the circumstances, in my view, the defendant has not shown any sufficient cause to have been prevented from appearing when the suit was called on for hearing.

6 The chamber summons, therefore, stands dismissed.

(K.R. SHRIRAM, J.)