

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

**NOTICE OF MOTION NO. 4322 OF 2009
IN
SUMMONS FOR JUDGEMENT NO. 197 OF 2009
IN
SUMMARY SUIT NO. 228 OF 1999**

Sagar Polymers

.. Plaintiff

Vs.

M/s. Philcab Insulated Wires & Cables

.. Defendant

None for plaintiff.

Mr.Bomi Patel a/w. Mr.Ashraf Patel i/b K. Ashar and Co. for
defendant/applicant.

CORAM : K.R.SHRIRAM, J.

DATE : 20TH OCTOBER, 2016

P.C.

1 This notice of motion is taken out to recall an ex-parte decree dated
3rd August 2009 passed by this Court.

2 In the affidavit in support, it is stated that the defendant's current
Advocate, vide letter dated 26th June 2009, requested the plaintiff's Advocate
to forward a copy of the plaint and all other proceedings/pleadings. The
plaintiff, however, did not provide copies of the same.

In the affidavit in reply, it is stated that all these pleadings have been
served upon the earlier Advocate Janak R. Vakil at his address, 401, Dolbin-
shir, 69-71, Ghoga Street, Fort, Mumbai 400 001 and not K. Ashar & Co as
K. Ahsar & Co. had not entered appearance. In the affidavit in support, there

is nothing annexed to show that everything was served upon the earlier Advocate. When the ex-parte decree was passed, in my view, the plaintiff should have brought to the notice of the Court that there was a letter from K. Ashar and Co. asking for a copy of the plaint etc. From the order, it does not appear that the plaintiff has brought this to the notice of the Court.

3 In the circumstances, having heard the counsel for the applicant and having considered the affidavit in support, reply and the rejoinder, in my view, ex-parte decree, passed on 3rd August 2009, requires to be recalled.

4 Notice of Motion allowed in terms of prayer clauses (a) and (b) and stands disposed accordingly.

5 The suit is restored to file along with the summons for judgement.

6 As the amount claimed in the suit is for less than Rs.1 crore, the suit along with the summons for judgement to be transferred to the City Civil Court, Bombay.

(K.R. SHRIRAM, J.)