

Santosh

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 4223 OF 2016**

Chhotelal Balram Tiwari

...Petitioner

Versus

Arcadia Computers & Software & Ors

...Respondents

Mr Rajendra R Mishra, for the Petitioner.

Mr Neel Helekar, for the Respondents.

CORAM: G.S. PATEL, J

DATED: 15th November 2017

PC:-

1. Heard.

2. The Petitioner challenges an order dated 29th October 2015 of the Appellate Bench of the Small Causes Court at Bandra that allowed the 1st Respondent's application under Order IX Rule 13 to set aside an *ex parte* decree. The Applicants, Arcadia Computers and Software, a partnership firm, were not originally Defendants to the ejectment action. The Petitioner obtained a decree against the present Respondents Nos.2 and 3. Before the Trial Court it was argued that it is only a party to the suit who can file an application under Order IX Rule 13. Arcadia argued that though it was not a part to the suit it purchased the suit property *pendente lite* and therefore in view of the

provisions of Section 146 of the Civil Procedure Code got *locus* or standing to maintain the application under Order IX Rule 13. The Petitioner said that it was in execution of the decree that Arcadia informed the bailiff that they had acquired ownership of the suit property and that till execution Arcadia was unaware of the decree.

3. Before the Appellate Court much turned on a letter dated 15th April 2010 said to have been sent by the Plaintiff to the original Defendant No.3, with which Defendant No.3 failed to comply. The Appeal Court found as a matter of fact that it was not demonstrated that this letter was ever sent to Defendant No.3 or that Defendant No.3 had imparted knowledge or notice of the proceedings to Arcadia thereafter. There was nothing at all before the Court to indicate that Arcadia was ever made aware of the pendency of the proceedings.

4. All that the Appellate Court has done is to give Arcadia an opportunity to defend itself. The application under Order IX Rule 13 setting aside the *ex parte* decree has been permitted and Arcadia has been directed to be joined as a Defendant to the suit. It is quite clear that had the Appellate Court rejected Arcadia's application, as Mr Mishra says it ought to have done, considerable prejudice would have been caused it without it being afforded an opportunity to present its side of the case.

5. I can find no reason in either law or equity to interfere with the impugned order. The Writ Petition is rejected. There will be no order as to costs.

6. Mr Mishra relies on the decisions of the High Courts in *Smt Santosh Chopra v Teja Singh and another*¹, *Subahu Kumar Jain v Jagdish Prasad Choudhury and Ors*² and *Smt Pushpa Pandey v Salauddin & Ors*³. These are clearly inapplicable to the peculiar facts and circumstances of the present case.

(G. S. PATEL, J.)

1 AIR 1977 Delhi 110.

2 AIR 1990 Gauhati 66.

3 AIR 2009 Chhattisgarh 44.