

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 369 OF 2017
WITH
CIVIL APPLICATION NO. 474 OF 2017

The State Trading Corporation of India Ltd	...Appellant
<i>Versus</i>	
Radiant Plastics & Anr	...Respondents

Mr Madhur Rai, *with Dharmaraj, i/b PRS Legal, for the Appellant.*
Mr Ganesh L, *i/b Prem S Gidwani, for Respondent No. 1.*

CORAM: G.S. PATEL, J
DATED: 19th June 2017

PC:-

1. The Plaintiff obtained an *ex parte* decree. The Defendants are the State Trading Corporation and State Bank of India. When they filed application under Order 9 Rule 13, by an extremely perfunctory order dated 23rd July 2014, the Trial Court said that since an *ex parte* decree had been passed “in the absence of the Defendant and their Advocate after framing of the issues” therefore the application under Order 9 Rule 13 could not be entertained. In fact, this is my interpretation of what the order actually says, which is this:

"Read Notice of Motion i.e. Application u/s. 9 Rule 13 of CPC. Perused Affidavit and documents. Heard Advocate for Applicant.

It appears that the Suit was proceeded u/s. 17 Rule 2-3 of CPC i.e. in the absence of Defendant and their Advocate after framing of issues. Therefore Application u/s. 9 Rule 13 of CPC documents not file. Notice of Motion is accordingly disposed off."

2. Orders of this cryptic nature should not be passed. Sufficient care must be taken to correctly reference the statute in question. The reasoning does not commend itself. It suggests that since there is an *ex parte* decree therefore an application under Order 9 Rule 13 (which is to set aside the *ex parte* decree in the first place) cannot be maintained. The order will have to be set aside.

3. The Appeal succeeds. It is allowed. The impugned order dated 23rd July 2014 is set aside. The *ex parte* decree is also set aside. The Suit is restored to file. I do so because little purpose will be achieved in asking the Defendants to re-agitate their motion under Order 9 Rule 13. It is a Notice of Motion I intend to allow immediately.

4. The Defendants have already filed their written statement. The parties will appear before the learned Judge on 17th July 2017 and obtain necessary directions for the trial of the Suit.

5. The Appeal from Order is disposed of in these terms with no order as to costs.

6. The Civil Application does not survive and is disposed of as infructuous.

(G. S. PATEL, J)