

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.365 OF 2017
IN
NOTICE OF MOTION NO.2827 OF 2017
IN
SUIT NO.718 OF 2012

Subhash Vitthal Warik

...Appellant

Versus

State of Maharashtra & Ors

...Respondents

Mr Pramod Bhosle, i/b Sharad K Bhosle, for the Appellant.

Mrs Ashwini Takalkar, with Mrs Madhuri More, AGP for State/Respondent No.1.

Ms Jaya Bagur, i/b Sharmila Deshmukh, for Respondent No.2/MHADA.

Mr Yadunath Chaudhari, for Respondent No.9.

CORAM: G.S. PATEL, J

DATED: 15th June 2017

PC:-

1. Ground (a) of the Memo is allowed to be deleted.
2. Heard. The Appeal is against an order dated 14th March 2017 by which, at the instance of Defendant No.9, the West Avenue Realtors Pvt Ltd, the learned Single Judge set aside an ex parte

judgment and decree dated 18th June 2014. The Court also imposed costs of Rs.5,000/- on Defendant No.9 and directed this be paid to the Plaintiff.

3. The entire matter turns on this. According to the Plaintiff, Defendant No.9 must be “deemed” to have been served because the Writ of Summons was delivered by the office of the Sheriff of Mumbai through his Bailiff on a company called Shivalik Venture Pvt Ltd, at the same address of Defendant No.9. Both companies have a common Director. According to the Plaintiff, the corporate veil must be lifted and Defendant No.9 must be deemed to have been served. On behalf of Plaintiff, reliance is placed on the decision of Supreme Court in *Parimal vs. Meena alias Bharati*.¹ In regard to the provisions of Order IX Rule 13 and its second proviso, it is submitted that an *ex parte* decree can be set aside only on sufficient cause being shown.

4. There can be no quarrel with this proposition. What the submission overlooks is that in order to be present, a party must be properly served in the first place. Improper service cannot be sought to be by-passed in this fashion by relying on Order IX Rule 13 or its second proviso. After all, justice and equity demand that any party to a suit is entitled to put forward a defence. That party must receive proper notice to be able to do so.

5. Defendant No.9 is a separate legal entity. It would lead to unimaginable consequences if at one address some other party was

1 (2011) 3 SCC 545

served and on that basis, a named defendant was held by the Court to have been served instead. The proposition regarding lifting the corporate veil is entirely misplaced; it is not to be used in situation as such this.

6. I am informed that the costs have been paid, and in fact Defendant No.9 has already filed Written Statement.

7. The Appeal is dismissed with no order as to costs. The Suit will be tried on its own merits.

(G. S. PATEL, J.)