

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.11376 OF 2014

Aabasaheb Nanebapu Pirjade ... Petitioner
Vs.
Shamrao Laxman Koli and others ... Respondents

Mr. Gautam T. Kanchanpurkar for Petitioner.
Mr. Drupad Patil for Respondents No.11, 14 and 15.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 09, 2017

P.C. :

Heard Mr. Kanchanpurkar, learned Counsel for petitioner, Mr. Patil, learned Counsel for respondents No.11, 14 and 15 at length. On the oral application made by Mr. Kanchanpurkar, leave to delete rest of the respondents, excepting respondents No.11, 14 and 15 being the contesting respondents, is granted. Amendment shall be carried out forthwith. Rule. Mr. Patil waives service for respondents No.11, 14 and 15. Having regard to the narrow controversy raised in the Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition under Article 227 of the Constitution of India, petitioner, hereinafter referred to as 'plaintiff', has challenged the judgment and order dated 30.09.2014 passed by the learned Civil Judge, Junior Division, Miraj below exhibit-49 in Regular Civil Suit No.119 of 2010. By that order, the learned trial Judge allowed the application made by the respondents No.11, 14 and 15, hereinafter referred to as defendants No.11, 14 and 15, for setting aside ex-parte order dated 26.09.2011.

3. In support of this Petition, Mr. Kanchanpurkar invited my

attention to the Bailiff's report dated 12.05.2010. He submitted that on 12.05.2010, defendants No.9 and 11 were present when the Bailiff went to effect service. Bailiff tried to serve defendant No.11. However, defendant No.11 refused to accept service. He, therefore, submitted that it amounts to good service on defendant No.11. He further submitted that as far as defendants No.14 and 15 are concerned, as per the order passed by the learned trial Judge allowing substituted service, defendants No.14 and 15 are served.

4. On the other hand, Mr. Patil submitted that the learned trial Judge did not pass any order under Order V, Rule 20 of C.P.C. permitting plaintiff to effect substituted service on defendants No.14 and 15. Mr. Kanchanpurkar does not dispute this position. Mr. Patil also fairly submitted that as the defendant No.11 refused to accept service, it has been treated as a good service.

5. In view thereof, in my opinion, the learned trial Judge was not justified in setting aside ex-parte order against defendant No.11. To that extent, impugned order deserves to be set aside and is accordingly set aside. Hence, the following order:

- a. Application exhibit-49 is partly allowed;
- b. Ex-parte order passed against defendants No.14 and 15 is set aside subject to costs of Rs.1,000/- payable by each defendant i.e. defendants No.14 and 15 to the plaintiff;
- c. As far as the defendant No.11 is concerned, the impugned order is modified. Resultantly, ex-parte order passed against defendant No.11 on 26.09.2011 stands.
- d. Rule is made absolute in the aforesaid terms.

(R. G. KETKAR, J.)