

Santosh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1476 OF 2015
IN
SUMMARY SUIT NO. 3070 OF 2008

M/s. Gramin Udyog Handloom Corporation	...Applicant
In the matter between	
Ranjit P. Jain Prop of M/s. Sanghvi Sons	...Plaintiff
Versus	
M/s. Gramin Udyog Handloom Corporation	...Defendant

Ms. Neeta Solanki, i/b Kiran Jain & Co., for the Plaintiff.
Mr. Rajendra R. Mishra, for the Defendant/Applicant.

CORAM: B. P. COLABAWALLA, J.

DATED: 4th October, 2017

PC:-

1. This Notice of Motion has been filed for setting aside the *ex parte* decree dated 14th January, 2011 passed by this Court in the above Summary Suit. When this matter came up before this Court on 14th January, 2011, this Court noticed that the Writ of Summons was duly served on the Defendant and despite service the Defendant has not entered appearance as stipulated by law. The Court further noticed that the liability of the Plaintiff was admitted by the Defendant by a letter dated 22nd December, 2007. In these

circumstances the *ex parte* decree came to be passed. This Motion has now been taken out after a period of more than four and half years for setting aside the *ex parte* decree. In the Affidavit in support it is the case of the Defendant that the Writ of Summons was never served upon the Defendant and the Defendant has a good case on merits to defend the Suit. In these circumstances, that the Defendant seeks that the *ex parte* decree be set aside.

2. I am unable to agree with the submissions made on behalf of the Defendant. Firstly, the Writ of Summons was served on the Defendant. It appears that pursuant to the praecipe filed by the Advocate for Plaintiff, the office of the Sheriff of Mumbai transmitted a packet containing a duplicate copy of the Writ of Summons and true copy of the plaint by Registered Post A.D. to the Defendant at its address at 19, Palika Bazar, Post Deoria, Uttar Pradesh, Pin-274 001, on 22nd April, 2009. This packet was returned with the endorsement "refused" on 28th April, 2009. This being the clear position, I am unable to accept the submissions of the Defendant that the Writ of Summons was never served upon them. When the packet was sought to be served on the Defendant, it was refused by them. The Defendant cannot now make a grievance that the Writ of Summons was not served on them. I therefore find no merit in this Notice of Motion and it is accordingly dismissed.

[B. P. COLABAWALLA, J.]