

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

3 WRIT PETITION NO. 105 OF 2017

M/S DHANRAJ CHHAGANLAL AND COMPANY AND OTHERS
VERSUS
KOHINOOR CLOTH STORE THROUGH ITS PARTNER PRADIP VASANT
LAL GANDHI

...

Advocate for Petitioner : Mr.S.V. Mundhe
Advocate for respondent No.1 : Mr.L.B.Palod

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CORAM : S.V.GANGAPURWALA, J.

DATE : AUGUST 14, 2018

O R D E R :

Mr. Mundhe, learned counsel submits that application filed by the petitioners for setting aside ex-parte order is rejected. The petitioners did not receive the suit summons. The Court has observed that the summons are served through R.P.A.D. The petitioners have not received notices by R.P.A.D. also.

2. The learned counsel submits that as summons itself are not served, the Court ought to have considered the application of the petitioners and the opportunity ought to have been given.

3. Mr. Palod, learned counsel submits that the summons are served upon the defendants by R.P.A.D. The R.P.A.D. envelope was received unclaimed. Even otherwise the matter was posted for ex-parte judgment. On that day the petitioners appeared. The Court has rightly observed that the stage cannot revert back.

4. I have considered the contention that the summons were not served upon the petitioners through the Bailiff and were sought to have been served by R.P.A.D. The R.P.A.D. envelope is returned back as unclaimed. That would not necessarily mean that the summons are actually served upon the defendants/petitioners. The Trial Court did not consider this aspect in the order and on technical ground the matter was adjourned for ex-parte judgment and on such adjourned date the defendants appeared. Now the matter cannot revert back. The Court ought to have taken pragmatic approach. It ought to have

considered as to whether the summons are really served upon the petitioners and whether the envelope that has been received unclaimed tantamounts the proper service. However, instead it has held that the summons are not properly served upon the petitioners. Even if defendant No. 1 is required to file application under Order 9 Rule 13 of the Code of Civil Procedure that would have to be allowed.

5. Considering the facts of the present case and the fact that the petitioners have complied with the order of this Court directing them to deposit Rs. 10,000/- each, I am inclined to exercise my discretion in favour of the petitioners. Considering the above, I pass following order :

ORDER

- i) Impugned order is quashed and set aside.
- ii) The order "Suit to proceed ex-parte" is set aside.
- iii) Parties shall appear before the trial

court on 3.9.2018.

iv) The present petitioners shall file written statement on or before 15.9.2018.

v) Considering the fact that matter is remanded back, the Trial Court shall endeavour to decide the suit expeditiously, preferably within a period of six months from the date of petitioners filing written statement.

vi) The Writ Petition is allowed.

vii) The cost of Rs. 30,000/- (Rs. Thirty Thousand Only) deposited by defendants is allowed to be withdrawn by the plaintiffs.

[S.V.GANGAPURWALA, J.]

mahajansb/