

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.7059 OF 2016

Ramanuj Vitamins and Anr.

.. Petitioners

V/s.

Rukmini Solvex P. Ltd.

.. Respondents

Mr.Ashish Pawar I/b Mr.Amit A. Karande for the petitioners

CORAM: K.K. TATED, J

DATED : DECEMBER 4, 2018

P.C. :

1 Heard.

2 By this petition under Article 227 of the Constitution of India, the Petitioner challenges the order dated 29.6.2015 passed by 6th Joint Civil Judge, Junior Division, Sangli below Exhibit-27 in Regular Darkhast No.109 of 2012 for setting aside the ex-parte decree.

3 The learned counsel for the Petitioner submits that in the present proceedings, Respondent plaintiff filed Special Civil Suit No. 21 of 1995 before the Civil Judge, Junior Division Gondhia for recovery of Rs.1,03,131/-. He submits that the said suit was decreed by judgment and decree dated 06.04.2004 and held that Petitioner is liable to pay a sum of Rs.1,02,931/- with interest @

21% p.a. from the date of the suit till 16.03.1995. He submits that thereafter the respondent original plaintiff filed Special Darkhast No.109 of 2012 for recovery of the said amount. He submits that in that application, petitioner original defendant filed application below Ex.27 on the ground that at the time of issuing summons in Special Civil Suit No.21 of 1995, Trial Court failed to comply the Order V Rule 20 of the Civil Procedure Code. Hence, Regular Darkhast No.109 of 2012 be set aside.

4 It is to be noted that decree passed by Trial Court on 06.04.2004 in Special Civil Suit No.21 of 1995 was not challenged by the petitioner. At the time of execution, petitioner filed application below Exhibit 27 on the technical ground that Trial Court has not complied Order V Rule 20 of the Civil Procedure Code, 1908 at the time of issuing summons. Admittedly, same issue cannot be raised at the time of execution if decree was not challenged by the petitioner. These facts are considered by the Trial Court.

5 In view of these facts, I do not find any substance in the present Writ Petition. Hence, same stands rejected.

(K.K. TATED, J.)