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

APPEAL FROM ORDER NO.1026 OF 2015

Amar Bahadur Verma
s/o Nanhu Verma

... Appellant

V/s.

Arun Hrishcandra Parab
and ors

... Respondents

Mr. Harsha Yatin Shah i/by Yatin R. Shah, for the
appellant.

Mr. Abhishek Gupta i/by Ashok M. Saraogi, for
respondents

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 12th SEPTEMBER, 2018.

P.C. :

1] Heard learned counsel for the appellant and respondent.

2] This Appeal from Order takes an exception to the order dated 22.04.2015, passed by the City Civil Court, Mumbai, thereby allowing the Notice of Motion No.1604 of 2014, in L.C. Suit No.1842 of 2014.

3] The said Notice of Motion was taken out by the respondent herein for setting aside the exparte decree dated 24.12.2013. The

trial Court has allowed the said Notice of Motion and hence the instant appeal.

4] Even a cursory perusal of the impugned order, passed by the trial Court, shows that respondent defendant has admitted therein that the writ of summons was duly served on him. In such situation, no sufficient cause is given as to why he failed to appear despite receipt of the said summons. The trial Court, has therefore, committed an error in setting aside the exparte, decree merely on the vague averment of the respondent that he had no knowledge about the contents of the document when he signed on the summons. It is not his case that he is an illiterate person and he was not made aware of the contents of documents.

5] Moreover, if he has clearly admitted that the summons was duly served on him and he has also signed on the said summons, then the trial Court has committed an error in setting aside the exparte decree and order in the absence of sufficient cause, worth the name given by respondent for his non appearance in the suit.

6] Moreover, the trial Court itself has observed that the decree passed against respondent is only of injunction restraining him from dispossessing the appellant from the suit premises without following due process of law. Therefore, the said decree is not going to cause any prejudice to the respondent, even if it is allowed to remain

exparte. The impugned order, therefore, passed by the trial Court cannot be called as legal, valid and justified. Hence the same needs to be set aside.

6] The Appeal is allowed. The impugned order passed by the trial Court is set aside.

[DR.SHALINI PHANSALKAR-JOSHI, J.]