

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

WRIT PETITION NO.1734 OF 2008

Aliar Singh Kunai Singh

(Since deceased)

Smt. Parvati Aliar Singh and others

..Petitioners

Versus

B. K. Bokil

..Respondent

Mr. P. J. Thorat, Advocate for the Petitioners.

CORAM : PRADEEP NANDRAJOG, C.J.

DATE : 26th JULY, 2019

P.C.

1] Heard learned counsel for the Petitioners.

2] Late Aliar Singh Kunai Singh was the owner of the property bearing Room No.3-A, Laxmi Niwas, Kurar Village, Malad (East), Mumbai-400 064, which was let out to B. K. Bokil. Alleging non-payment of rent and illegal sub-letting, suit for recovery of possession was filed which was decreed on 14.03.2001. The decree is an ex-parte decree but relevant would it be highlighted that B. K. Bokil was served with summons in the suit. He did appear and filed a written statement. Thereafter he stopped appearing. The suit proceeded ex-parte. (The date not forthcoming on record). Ex-parte decree was passed on 14.03.2001.

3] The decree was put into execution and the execution was resisted. The occupant Suresh and two others filed objections. The said proceedings came to an end on 25th April 2005. On 17.10.2005, B. K. Bokil filed an application under Order IX Rule 13 of the Code of Civil Procedure pleading that suffering from diabetes he could not appear to defend the proceedings. Believing this version, the learned Judge has vide impugned order dated 18th December 2007 recalled the ex-parte decree dated 14.03.2001 and has restored the suit for trial.

4] A perusal of the impugned judgment does not show that the Defendant suffered from such disease or illness that he could not attend the proceedings. The impugned judgment overlooks the facts that the decree was put into execution and was resisted; the obstruction proceedings had to be taken out and were decided in favour of the Petitioner. It is obviously a case of the Defendant having sub-let premises finding a way to help the sub-letees who at the first stage obstructed the execution.

5] The Petition is disposed of setting aside the impugned order dated 18th December 2007. Application filed by the Respondent under Order IX Rule 13 of the Code of Civil Procedure is dismissed. Ex-parte decree dated 14.03.2001 is restored.

CHIEF JUSTICE