

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

WRIT PETITION NO.9562 OF 2019

Achlesh Daga & Ors. ... Petitioners

Vs.

Nikhil Kumar Daga & Anr. ... Respondents

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Mr. Pankaj Kowli, Mr. Ashok Varma a/w Mittal Munoth I/b.
Kookada & Associates for the Petitioners.

Ms. Sheetal Prakash for the Respondent No.1.

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CORAM : M. S. KARNIK, J.

DATE : 3rd SEPTEMBER, 2019.

P. C.:

1. Heard learned counsel for the petitioners.
2. The petitioners by this petition are challenging the order dated 15.03.2019 which is at page 167 of the paper book passed by the City Civil Court, Mumbai rejecting Chamber Summons No.1217 of 2017 filed by the petitioners for setting aside ex-parte decree in Summary Suit No.431 of 2014.
3. The respondent No.1 had filed Summary Suit to recover sum of Rs.38,04,984/- with interest @ 24% p.a. from the date of the suit from the defendants M/s. Pioneer Synthetics.

4. The defendant firm was duly served with the suit summons. None appeared on behalf of defendants despite service of the summons. As the defendants refused to accept the postal writ of summons, the suit was decreed ex-parte. The defendants that is the firm was directed to pay sum of Rs.35,10,000/- along with interest to the plaintiffs. The judgment and decree is dated 4.8.2014.

5. The petitioners by filing chamber summons contended that they are the partners of firm and were not duly served with the suit summons. According to petitioners there were some disputes between the partners of the firm. The petitioner's cousin Mr. Jaikishan Daga accepted the suit summons who was in collusion with the plaintiffs and therefore did not represent the defendants effectively.

6. Learned counsel for the petitioners would contend that they are very much interested in contesting the suit. They had no knowledge of the suit summons. According to him it was Mr. Jaikishan Daga who did not represent the firm properly and

kept the petitioners in dark about the said suit though he accepted service of the suit summons. Learned counsel for the petitioner would submit that this was on account of dispute in the partnership. However he contends that though there was dispute amongst the partners, the petitioner right to defend the suit cannot be taken away in this manner.

7. The Trial Court rejected the chamber summons for the reasons recorded.

8. Learned counsel for the respondent No.1-original plaintiff submitted that filing of Chamber Summons is nothing but dilatory tactics adopted by the petitioners. She pointed out that the defendants were duly served with the suit summons. She would submit that the plaintiff is not concerned with the interse dispute between the partners. She would more over submit that the petitioners were expelled from the partnership and have no right to contest the suit. She has invited my attention to the averments made by the petitioners in Criminal Writ Petition No.352 of 2015 wherein the petitioners averred that they are expelled from the partnership.

9. I have gone through the order passed by the Trial Court. The judgment and decree was passed ex-parte on 4.8.2014. The defendants were duly served with the suit summons. However they failed to appear despite service. So far as the petitioners are concerned they were expelled from the partnership. If there is dispute amongst the partners, the petitioners always adopt appropriate remedy to get the dispute adjudicated before appropriate forum. However in the present case the defendant firm was duly served. Apart from there being a delay of three years for which there is no plausible explanation offered, even otherwise the petitioners are expelled partners of the firm and therefore at their instance the Chamber Summons is not maintainable. It is not possible for me to take any other view than one which has been taken by the Trial Court.

10. It is one of the contention of the learned counsel for the petitioners that the decree has been fraudulently obtained. If that is so it is always open for the petitioners to file appropriate proceedings to get the decree set aside.

11. With these observations no interference is warranted with the order passed by the Trial Court, the petition is dismissed with no order as to costs.

(M. S. KARNIK, J.)