

INTERIM APPLICATION NO.176 OF 2021

IN

FIRST APPEAL [STAMP] NO.506 OF 2021

Akshay Sanjay Pagare] **Applicant**

Vs.

Jyoti Datta Wagh] Respondent

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Mr. Dushyant S. Pagare, for Applicant.

None for Respondents.

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CORAM : PRITHVIRAJ K. CHAVAN, J.
DATE : 24th FEBRUARY, 2021.

P.C.

1. This is an application seeking stay to the execution and implementation of the judgment and decree dated 1st August, 2019 passed by the learned Judge, City Civil Court, Mumbai in Summary Suit No.512 of 2019. It is observed in the impugned judgment that despite service, the defendant (applicant herein) did not appear and hence, suit proceeded ex-parte against him.

2. Learned Counsel has tendered affidavit of service *qua* the respondent-plaintiff which indicates that the Postal Department had confirmed the delivery of the item on 8th February, 2021. Photostat copy of the said track consignment indicates the said fact. However, nobody is present on behalf of the respondent-plaintiff.

3. Learned Counsel for the applicant submits that alleged service upon the applicant-defendant is defective. In support of his submission, he has drawn my attention to the report of the Bailiff at Page No.38 which indicates that the writ of summons was served upon the applicant-defendant on 12th July, 2019 at his gain place namely Kurla Kamani MCGM (Consy) Chowky, L.B.S Marg, Kurla (West), Mumbai 400 070. It is submitted by the learned Counsel that on the said date, he was not present at his gain place which is evident from a communication addressed to the applicant-defendant by the Administration Officer of his Department which is at page 43. It reveals that defendant Akshay Sanjay Pagare was absent through out in the month of July, 2019.

4. Secondly, photostat copy of the identity card of the applicant-defendant issued by M.C.G.M depicts his signature which is different than what has been shown by the Bailiff. Thirdly, photostat copy of Aadhar Card of the applicant shows permanent address of the applicant as “Pushp Varsha, Room No.202, Plot No.112, Sector-4 A, New Panvel, Maharashtra.

5. For the aforesaid reasons, execution and implementation of impugned judgment and decree needs to be stayed and, therefore, there shall be ad-interim relief in terms of prayer clause (a).

6. The application stands disposed of.

[PRITHVIRAJ K. CHAVAN, J.]