

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

WRIT PETITION 6753 OF 2022

Prakashchand R. Jain ... Petitioner

V/s.

Raghvendra Shikshan Prasarak ... Respondents
Mandal & Ors.

Mr. Sandeep R. Mishra for the Petitioner.

CORAM : ROHIT B. DEO, J.

DATE : 22nd JUNE 2022

P.C.

1. The plaintiff in Summary Suit 1230 of 2014 is assailing the order dated 18.12.2021 rendered by the Judge, City Civil Court in Notice of Motion 3207 of 2019 whereby, the notice of motion is allowed and the ex-parte decree in Summary Suit 1320 of 2014 is set aside subject to payment of costs of Rs.20,000/- to the plaintiff.

2. Perusal of the order impugned, particularly paragraph 10 thereof, reveals that the affidavit of service on the basis of which the learned Judge proceeded ex-parte, itself recited the postal department has no information of receipt of notice by defendants 1 and 3. Neither

the acknowledgment is received nor the post parcel is received by the Registry of the Court. In so far as defendant 2 is concerned, he appears to have refused service.

3. The learned Trial Judge has allowed the notice of motion since defendants 1 and 3 were not served.

4. I do not see any error in the order impugned. Looking at the nature of the controversy, the decree could not have been set aside only against defendants 1 and 3.

5. No interference in writ jurisdiction is necessary. The petition is dismissed.

6. However, the learned Trial Judge is requested to expedite the suit.

(ROHIT B. DEO, J.)