

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 620 OF 2022
WITH
INTERIM APPLICATION NO. 9793 OF 2022
IN
APPEAL FROM ORDER NO. 620 OF 2022

Triveni Prasad Yadav ...Appellant

V/s.

Mr. Jaiprakash Arun Gupta ...Respondent

Mr. A. M. Saraogi, for the Appellant / Applicant.

Mr. Ramesh Jain, for the Respondent.

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CORAM : C.V. BHADANG, J.

DATE : 25 JULY 2022

P.C.

. This appeal is taken up for final disposal at the stage of admission, by consent of the parties.

2. By this appeal, under Order XLIII of Code of Civil Procedure (CPC), the Appellant / original Defendant is challenging the order dated 1 March 2022 passed by the learned City Civil Court at Mumbai in Notice of Motion No.503/2022

in Summary Suit No.1480/2017. By the impugned order, the application filed by the Appellant under Order XXXVII of the CPC for setting aside the ex parte decree dated 28 March 2018 passed against the Appellant in Summary Suit No.1480/2017 has been rejected.

3. I have heard the learned counsel for the parties. Perused record.

4. The contention on behalf of the Appellant is that the Appellant was never served of the summons in the Summary Suit. Mr. Saraogi, the learned counsel for the Appellant submits that the Appellant being in service of Railway, his official address of the Railway Car Shed was furnished in which there are several employees working and there is nothing on record to show that there was personal service of the summons in the Summary Suit on the Appellant. Learned counsel for the Appellant submitted that as the Appellant's retiral dues to the extent of approximate Rs.13 Lakhs have been attached in the execution of the impugned decree, he submits that he is ready and willing to continue the said order of attachment and undertakes not to withdraw the amount of such retirement dues during the pendency of the suit. He submits that subject to this, decree may be set aside and the suit may be directed to be heard on merits.

5. The learned counsel for the Respondent / Plaintiff submitted that summons was duly served on the Appellant. However, in order to bring quietus to the matter, the learned counsel in all fairness submitted that subject to order of attachment against the Garnishee being continued, the suit may be directed to be decided on merits.

6. In that view of the matter, the following order is passed-

ORDER

- (i) The appeal is allowed.
- (ii) The impugned order is hereby set aside.
- (iii) The Notice of Motion No.503/2022 stands allowed, as prayed.
- (iv) The Summary Suit No.1480/2017 is restored back to the file of City Civil Court, Mumbai for disposal, according to law.
- (v) Parties to appear before the trial Court on 17 August 2022.
- (vi) It would be open to the Appellant to file Written Statement on merits, within two weeks' from the date of appearance.
- (vii) The order passed against the Garnishee restraining the disbursement of the retiral dues to the Appellant shall continue to operate during the pendency of the Civil Suit.
- (viii) In such circumstances, there shall be no

order as to costs.

(ix) The Civil Application, if any, is accordingly disposed of.

C.V. BHADANG, J.