

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

CIVIL REVISION APPLICATION NO. 351 OF 2022

Harilal Narmal (deceased) Gopibai
w/o Hiralal Narmal & Ors.

... Applicants

Vs

Ms Gayatri Enterprises (India) Pvt. Ltd.

... Respondent

Mr. Sachin Chavan for the Applicants.

CORAM : NITIN W. SAMBRE, J.

DATED : 26th JULY, 2022

P.C.:

1. Heard.
2. The respondent's RAE Suit No. 2000 of 2016 was ex-parte decreed against the applicants vide judgment and order dated 08/03/2019 passed by Small Causes Court at Mumbai.
3. The said decree was executed by taking possession of the suit premises on 29/08/2019.
4. The present applicants/original defendants, in this background took out MARJI Application No.305 of 2019 under the provisions of Order IX Rule 13 for setting aside the ex-parte decree.
5. The said MARJI Application came to be rejected on 22/09/2021 which order was confirmed in an Appeal being Misc.

Application No.227 of 2021 on 08/04/2022, as such the present revision.

6. While questioning the order passed by the Small Causes Court delivered on 22/09/2021 so also by the Appellate Court on 08/04/2022 the counsel for the applicants would urge that Hiralal was the original tenant who expired in the year 1982. According to him, the non-applicant have accepted the rent thereafter and as such the fact about death of Hiralal was well within the knowledge of the respondent-landlord.

7. In the aforesaid background, it is claimed that instead of initiating the eviction proceedings against the Lrs of deceased Hiralal, intentionally the suit proceedings for eviction were initiated against dead person. As such, the decree becomes nullity.

8. It is further claimed that the suit was initiated against a person by name "Harilal" and not "Hiralal". It is claimed that such attempt on the part of the respondent is to misguide the parties to the suit to have an ex-parte decree in their favour. In addition, the contentions are, the suit summons were never served on the applicants as the service was effected by alternate mode i.e. by post so also by affixing the suit summons

on the door of the suit premises.

9. As such, it is claimed that the Court below ought to have appreciated the fact about passing of the decree without their being appropriate service of suit summons on the applicants. Further contentions are the suit summons, even if, presumed for the sake of arguments to have been affixed on the door of the suit premises, the fact remains that the same requires to be accompanied by a copy of the plaint. According to him, it is not reflected in the report of the Bailiff that along with the suit summons, the copy of the plaint was already pasted on the door of the suit premises or made available on the spot of the suit property.

10. In this background, it is claimed that since the statutory mandate is not followed the service becomes illegal and as such the decree needs to be set aside.

11. I have appreciated the aforesaid submissions.

12. The fact remains that the non-applicants filed RAE Suit No.2000 of 2016 which was ex-parte decreed on 08/03/2019. The decree was passed on the ground of the breach of terms of tenancy and violation of the provisions of Maharashtra Rent Control Act, 1999. Amongst other points which were considered

and proved before the Court below were, the premises were not been used by the applicants without reasonable cause for the purpose for which the same was let out for a period of last six months immediately preceding the commencement of the suit. The issue as regards arrears, was also answered against them and directions issued about inquiry in the *mesne profit*.

13. Since the decree was ex-parte, the applicants were left with two options, either to challenge the decree in revision before the division bench or under Order IX Rule 13 of the CPC for setting aside ex-parte decree.

14. The applicants have chosen to follow the later course i.e. moving an MARJI Application under Order IX Rule 13. It appears that in the said proceedings it was noticed by the Trial Court that the suit was progressed against Harilal Narmal and three attempts were made to serve the suit summons i.e. 21/01/2017, 22/01/2017, & 14/01/2017. The Bailiff report in categorical terms states that the suit premises were found to be locked. Upon an inquiry with the neighbors, whereabouts the said tenants were not available as he was not seen in the suit premises from couple of months.

15. As a sequel of above, the non-applicant has taken out

fresh proceedings for effecting substitute service on the present applicants / tenants and accordingly the non-applicant was permitted to serve the applicant by RPAD. The said envelope containing the suit summons and plaint was returned unclaimed vide Exhibit-9 which has rightly prompted the Trial Court to observe that there was sufficient service on the applicants was deemed to be completed.

16. Apart from above, the fact remains that even if the Harilal has expired on 06/03/1982 as is claimed, the fact remains that the suit premises remained locked for a continuous period as the communication address by the non-applicants in relation to payment of arrears of rent, the suit notice and also seeking details about the consumption of electricity were neither received nor responded.

17. The aforesaid factual matrix has rightly prompted both the Courts below to believe that the applicants were not residing in the suit premises and has abandoned the same.

18. In the aforesaid background, having regard to the provisions of the General Clauses Act, as the envelope sent by RPAD containing plaint and the suit summons was not claimed by the Applicants (return back as not claimed) the Trial Court

was justified in recording findings that the service on applicants was complete. In that view of the matter, the claim put forth that neither the the suit summons was served and the suit summons was not accompanied with the plaint cannot be accepted as the suit summons which was sent through RPAD was also not claimed.

19. Apart from above, the claim put forth that the suit was initiated against wrong person i.e. Harilal is of hardly any significance particularly when the fact remains that the decree in question was rightly executed and the possession of the suit premises were received by the landlord on 29/08/2019.

20. In the aforesaid background, I hardly see any reason to cause interference in the revisional jurisdiction as no failure to exercise jurisdiction or error of jurisdiction to the notice. The revision as such fails and same stands dismissed.

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(NITIN W. SAMBRE, J.)