

Arjun

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2324 OF 2023**

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Sameer Dashrath Kambli ...Petitioner

V/s.

Shagun Hospitality Pvt. Ltd. & Anr. ...Respondents

Mr. Kunal Bhanage a/w Mr. Akshay Pawar, for the
Petitioner.

Ms. Bijal Chowlera a/w Altamash Kapadia, for
Respondent No.1.

**CORAM : MADHAV J. JAMDAR, J.
DATED : 30th MARCH, 2023**

P.C.:

1. Heard Mr. Bhanage & Mr. Pawar, learned counsel
appearing for the Petitioner and Ms. Chowlera, learned
counsel appearing for Respondent No.1.

2. The Petitioner in this Writ Petition is challenging the
legality and the validity of order dated 4th February, 2023
passed by the Appellate Bench of the Small Causes Court at
Mumbai in Misc. Appeal No.135 of 2022 as well as the
legality and the validity of the order dated 27th April, 2022
passed by the learned Judge of the Small Causes Court at
Mumbai in MARJI Application No.106 of 2019 in R.A.E. Suit

No.828 of 2011.

3. The said R.A.E. Suit No.828 of 2011 was filed by Respondent No.1 against the Petitioner and Respondent No.2. It is the claim of Respondent No.1 in the plaint that Respondent No.2 i.e. Defendant No.1 is the tenant and the Petitioner i.e. Defendant No.2 is the sub-tenant and the suit summons in the said R.A.E. Suit was received by Mrs. Sushma S. Kambli i.e. wife of present Petitioner-Sameer Dashrath Kambli as reflected in Bailiff report dated 12th July, 2012. It is also important to note the earlier Bailiff Reports dated 10th June, 2011, 3rd October, 2011 and 9th November, 2011 which read as under :

“Bailiff report dated :- 10/6/2011.

Unserved for Defendant No.1 & 2.

I went in search of Defendant No.1 & 2 at ground floor Room No. 16A, 201 Anand Bhavan, Plot No.84, T.H. Kataria Marg, Mahim(w), Mumbai :- 400016 on 6th June, 2011 at 12:15 to 12:45 p.m. But said Defendant No.1&2 were not found on my inquiries with inmate lady Smt Sushama Samir Kamble is wife of D-2. I was informed that said Defendant No.2 has gone out and no fixed time to be return and she do not know anything about said Defendant No.1. Hence returned back Unserved.

Bailiff report dated :- 03/10/2011.

Unserved for Defendant No.1 & 2.

I went to serve copy of this summons alongwith a copy of Plaint on the withinnamed Defendant No.1&2 on their address at 201, Anand Bhavan, Ground floor, Room No. 16-A, Plot No.84, T.H. Kataria Marg, Mahim(w), Mumbai - 400016 on 3/10/2011 at about 10:45 a.m. But said Defendant No.1&2 were not found. On my inquiries with inmate lady Mrs. Sushama Samir Kamble-wife of the Defendant-2, I was informed that the said Defendant No.2 has gone out at work and she do not know anything about the said Defendant No.1. Hence I came back.

Bailiff report dated :- 09/11/2011.

Unserved for Defendant No.1 & 2.

I went to serve copy of summons alongwith copy of Plaint and the Defendant No.1&2 at 201, Anand Bhavan, Room No. 16-A, Plot No.84, T.H. Kataria Marg, Mahim(w), Mumbai :- 400016 on 9th Nov 2011 at 10:30 a.m. but they were not found. I was informed by present occupant i.e. Sushama that the Defendant No.2 has gone out and she do not know anything about Defendant No.1. Hence I came back.”

- 4.** The Petitioner’s wife-Smt. Sushma S. Kambli accepted

the suit summons on 12th July, 2012 and, therefore, the Bailiff report dated 12th July, 2012 is also important and the same reads as under :

“Bailiff report dated :- 12/7/2012.

Unserved for Defendant No.2 on 12/7/2012.

Serve a copy of this summons alongwith Plaint on Smt. Sushma Sameer Kambli who accepted this summons for and on behalf of her husband i.e. Defendant No.2 at Ground Floor, Room No.16-A, 201, Anand Bhavan, Mumbai on 12/7/2012 at about 5:45 p.m. and obtained her signature as above. Also the Defendant No.1 he was not found at above same address date and time I was informed by present occupant Smt. Sushma Kambli that said Defendant No.1 left this premises since longback so by order of Hon'ble Court I this day pasted a copy of summons with plaint for Defendant No.1 above same address.”

5. It is the main contention of the learned counsel appearing for the Petitioner that, the signature on the suit summons is not of the wife of the Petitioner and, therefore, it is their contention that, the petitioner has not been served.

6. Ms. Chowlera, learned counsel appearing for Respondent No.1 has produced on record photocopies of

certified copy of Bailiff Reports of service dated 10th June, 2011, 3rd October, 2011, 9th November, 2011 and 12th July, 2012. The said Bailiff Reports are set out hereinabove. The Petitioner could not be served the suit summons as on 10th June, 2011, 3rd October, 2011 and 9th November, 2011 he was not available at the relevant time. However, on all these dates wife of Petitioner was present. She accepted the suit summons on 12th July, 2012 on behalf of the Petitioner and, therefore, he has been served on 12th July, 2012.

7. As the Petitioner has failed to appear in the said suit in spite of service, the suit was decreed on 18th March, 2014 and eviction decree has been passed. Thereafter, Respondent No.1 filed Execution Application bearing No.55 of 2017 and in the Execution, the notice is again received by wife of the Petitioner on 24th March, 2017 which is produced at page No.139 of compilation of documents produced on behalf of the Respondent No.1.

8. Learned counsel appearing for the Petitioner has accepted that, the signature of Petitioner's-wife on the said Bailiff report dated 14th March, 2017 is signature of the Petitioner's wife. A perusal of the signature on page No.139

which is admitted signature of Petitioner's wife and as appearing on page No.131 i.e. as per Bailiff Report dated 12th July, 2012 of Petitioner's wife put while accepting suit summons clearly show that both the signatures are of the same person.

9. Apart from that, it is very significant to note that, in view of the contentions raised by the Petitioner that the signature appearing on Bailiff report dated 12th July, 2012 is not of the Petitioner's wife, the Application bearing Exh.-7 in MARJI Application No.106 of 2019 in R.A.E. Suit No.828 of 2011 was filed by the Plaintiff i.e. Respondent No.1 seeking appointment of handwriting expert to verify whether the signature as appearing on the Bailiff report dated 12th July, 2012 is of wife of the Petitioner and surprisingly and shockingly the said Application was opposed by the Defendant No.2 i.e. the present Petitioner. Although, the said Application at Exh.-7 was rejected, it was concluded by the learned Judge of the Small Causes Court at Mumbai in order dated 4th January, 2020 passed below Exh.-7 in MARJI Application No.106 of 2019 that the signature appearing on the said Bailiff report dated 12th July, 2012 is the signature of

wife of the Petitioner. The learned Judge while rejecting the said MARJI Application No.106 of 2019, clearly held that, the wife of the Petitioner has signed the said suit summons. The Appellate Court has also held that, there is ample and sufficient evidence to show the proper service of the suit summons upon the Defendants.

10. By recording very sound reasons, the MARJI Application was rejected by the learned Judge and the said order was confirmed by the learned Appellate Court. Thus, there is no ground to interfere in the well reasoned orders passed by the learned Judge of the Small Causes Court and the learned Appellate Court. Therefore, the Writ Petition is dismissed, however, with no order as to costs.

11. Learned counsel appearing for Petitioner seeks stay of execution of eviction decree. Ms. Chowlera, learned counsel appearing for Respondent No.1 states that the execution is on 2nd May, 2023. She fairly states that, till 31st July, 2023, decree of eviction will not be executed.

12. Learned counsel appearing for the Petitioner states that, the Petitioner alongwith his family members are occupying the suit premises, they will not create third party

interest with respect to the suit premises i.e. Room No.16A, Anand Bhuvan, Plot No.84, T. H. Kataria Marg, Mahim (W), Mumbai - 400 016 and that they will handover vacant possession of the suit premises to Respondent No.1 on or before 31st July, 2023 in case the Petitioner fails to obtain stay of eviction decree from the Supreme Court. The statement made on behalf of the Petitioner by the learned counsel appearing for the Petitioner is accepted as undertaking to this Court. The Petitioner and all adult family members of the Petitioner to file such undertaking within a period of four weeks from today and serve copy of the same on the learned Advocate appearing for Respondent No.1. It is made clear that, if such undertaking is not filed within a period of four weeks from today then, the Executing Court may proceed with the execution on 2nd May, 2023 and, if, such undertaking is filed within stipulated period, the eviction decree be not executed till 31st July 2023.

13. The Writ Petition is dismissed subject to above. No Costs.

[MADHAV J. JAMDAR, J.]