



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Civil Application (CAC) No. 106 of 2023

in

Civil Revision Application No. 22 of 2021

[Sawan Nandkumar Bhatewara ..vs.. International Asset Reconstruction Co. Pvt. Ltd. and ors.]

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Dr. Anjan De, Advocate for the applicant (original non-applicant no. 2)
Mr. S. V. Purohit, Advocate for the applicant in CRA 22/2021
Mr. R. M. Bhangde, Advocate for non-applicant no. 4

CORAM : ANIL L. PANSARE J.

DATED : 13-12-2023

By the present application, the non-applicant no. 2 is seeking to serve non-applicant no. 3 (original defendant no. 2).

2. The record and particularly order dated 30-6-2021 passed by this Court indicates that this request was turned down by the Court on the count that original defendant no. 2 was not served by the plaintiff itself.

3. Learned counsel appearing for the plaintiff submits that the plaintiff has taken efforts to serve the defendant no. 2. The mistake at all has been committed by the bailiff who was directed to serve the defendant no. 2 in terms of Order V Rule 17 of the Code of Civil Procedure, 1908 (CPC), which provides that if the addressee is absent, the bailiff shall affix copy of the summons at the conspicuous place and file report to that effect. In the present case, the bailiff has informed that defendant no. 2 was absent and instead of affixing

summons at conspicuous place, has simply returned back the summons without complying with the provisions under Order V Rule 17 of the CPC.

4. Learned counsel for the applicant - original defendant no. 1 has submitted that remark of bailiff indicates that the office was locked. The bailiff enquired with the surrounding offices and was informed that the office of defendant no. 2 has been closed since long. That being so, according to him, there was no reason why the bailiff would affix the copy of summons at the conspicuous place. Thus he submits that bailiff has rightly returned the summons to the Court. In other words, his submission is that the plaintiff himself has failed to serve the defendant no. 2 and, therefore, whatever has been observed by this Court in order dated 30-6-2021 is correct.

5. I need not go into this controversy. The fact remains that the applicant – defendant no. 1 has filed application under Order VII Rule 11 of the CPC. It is well settled that while deciding such application, averments made in the plaint alone will have to be considered.

6. In the circumstances, the purpose will be served if the application is disposed of with the observation that if the Court finds it necessary to hear original defendant no. 2, the notice could be served upon it. This notice will be issued, not at the instance of the parties but upon satisfaction of the Court that the presence of defendant no. 2 is required for assistance.

7. With the above observations, the application is disposed of.

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8. Considering the fact that the civil revision application is of the year 2021, let the application be listed for final hearing at the admission stage on 11-1-2024.

(Anil L. Pansare, J.)

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