

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

**Appeal from Order No.141 of 2024
With
Civil Application No.341 of 2019
With
Civil Application No.2 of 2024**

Avon Elastomers India
8A, Shyam Market,
Hing Ki Mandi, Agra-282 003
Through Mr. Gagan Monga
Partner of the appellant

... Appellant
(Ori. Defendant)

Vs.

Multibase India Ltd
74/5-6, Daman Industrial Area,
Village Kadaiya, Nani Daman

... Respondent
(Ori. Plaintiff)

Mr Karthik Rajashekhar along with Mr Arif Sayed for the
appellant.
Mr Vivek Khemka for the respondent.

**Coram : R. N. Laddha, J.
Date : 30 April 2024.**

P.C. :

In the facts and circumstances of the case and for the
reasons stated in Civil Application No.341 of 2019, the delay
of 13 days in filing the Appeal from Order stands condoned

and the application is disposed of.

2. By consent of the learned Counsel for the parties, the appeal is taken up for hearing.

3. The brief facts arising in this appeal are as follows. The respondent had filed a Special Civil Suit bearing No.11 of 2011 before the Civil Judge, Senior Division, Daman, against the appellant to recover a sum of Rs.85,28,471/-. As the appellant failed to appear, the trial Court *ex-parte* decreed the suit on 18 June 2012. Subsequently, in 2014, the appellant filed an application under Order IX Rule 13 of the Code of Civil Procedure, 1908 ('CPC') before the trial Court. The trial Court rejected this application by an order dated 4 March 2016. Aggrieved thereby, the appellant has approached this Court in the present Appeal from Order.

4. Mr Karthik Rajashekhar, the learned Counsel appearing on behalf of the appellant, submits that the trial Court failed to appreciate that the appellant became aware of the *ex-parte* decree only on 10 March 2014 when it received the summons from the executing Court. He contends that the service of the summons of the suit was improper, and the respondent took no efforts to serve it upon the appellant. Instead of obtaining

the service of summons through the Court's bailiff, the respondent directly served the summons through paper publication. He further contends that the respondent did not publish the summons in the local newspaper, which has wide circulation in Agra.

5. On the other hand, Mr Vivek Khemka, the learned Counsel representing the respondent, submits that the trial Court rightly dismissed the appellant's application. He contends that the appellant intentionally avoided receiving the suit summons. Consequently, the respondent had to seek substituted service, leading to the publication of the summons in the widely circulated 'Times of India' newspaper in Agra. Moreover, the address at which the summons of the execution proceedings was served upon the appellant is the same address on which the summons of the suit was sent. Similarly, the appellant in the application under Order IX Rule 13 before the trial Court, and the present Appeal from Order mentioned the same address at which the suit summons was sent and the executing Court's summons was received. According to the learned Counsel, these facts in itself demonstrate the appellant's attempt to evade the service of the suit summons.

6. Upon reviewing the material on record, it becomes

evident that the respondent filed the suit against the appellant to recover money. In this suit, an *ex-parte* decree was passed on 18 June 2012. Subsequently, the respondent obtained an order to transfer the decree for execution to the Court of Civil Judge in Agra. The appellant received summons to appear in the execution proceedings on 10 March 2014 at the same address. However, the appellant claims that this address was incomplete and incorrect. Initially, the suit summons was returned with the note 'insufficient address' followed by 'found locked'. Consequently, the respondent sought permission from the trial Court to publish the suit summons in a newspaper. As per the provisions of Order V Rule 20(a) of the CPC, the service of summons through public notice is considered proper notice.

7. The record indicates that the appellant sent a notice to the respondent, and the respondent replied to it during the pendency of the suit. The appellant has not disputed the issuance of the notice or its reply. Therefore, it cannot be argued that the appellant lacked knowledge of the suit. There were no substantial reasons preventing the appellant from appearing before the trial Court when the suit was scheduled for hearing. Furthermore, the suit was filed in 2011 and

decreed in 2012, resulting in the respondent being deprived of the benefits of the decree. This appeal seems to be an attempt to delay the execution proceedings.

8. In light of the above, there is no infirmity in the impugned order. Resultantly, the present Appeal from Order stands dismissed. As a sequel, the pending Civil Application No.2 of 2024 also stand disposed of.

[R. N. Laddha, J.]