

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

CIVIL REVISION APPLICATION NO. 173 OF 2024

1. Mahadev Vithoba Shinde

since deceased, through legal heirs & Ors.

....*Applicants*

*(Orig.Appellants/Orig.
Defendant No.2(a) to 6)*

: *Versus* :

Mr. Shiv Prasad Ram Khilawan Gupta

....*Respondent*

(Orig. Plaintiff)

Mr. Vijay Thakur *i/by. Thakur & Associates, for the Applicants.*

Mr. Shreeram Redij *a/w. Mr. Santosh Musale, for the Respondent.*

CORAM : SANDEEP V. MARNE, J.

Dated : 5 August 2024.

P.C. :

1) The challenge in the present petition is to the order dated 6 February 2024 passed by the Appellate Bench of the Small Causes Court rejecting Misc. Appeal No. 39 of 2023 and confirming the order dated 22 June 2023 passed by the Small Causes Court in MARJI Application No. 40/2020. It appears that the suit filed by the Plaintiff came to be decreed by *ex-parte* decree dated 21

September 2017. The Applicants filed MARJI Application No. 40/2020 seeking setting aside of the *ex-parte* decree contending that the Original Defendant was never served with the suit summons. The Small Causes Court has however rejected the MARJI Application by order dated 22 June 2023 and the same is confirmed by the Appellate Bench by its order dated 6 February 2024.

2) I have heard Mr. Thakur, learned counsel appearing for the Applicants and Mr. Redij, the learned counsel appearing for the Respondent-Original Plaintiff.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it is seen that the Small Causes Court and its Appellate Bench have taken into consideration the following three Bailiff Reports, which are as under :

(i) The first bailiff report dated 18 April 2023 reflects that the bailiff visited the suit premises between 10.35 a.m. to 12.05 p.m. and noticed that the Defendant was not present. On enquiry, he found that Sunil Mahadeo Shinde, Defendant's son was present in the suit premises who informed the bailiff that the Defendant had proceeded to his native place. The son accordingly refused to accept the service of suit summons.

(ii) The second bailiff report dated 4 July 2013 indicates that the bailiff visited the suit premises between 11.00 a.m. to

12.30 p.m. and again could not find the Defendant at the suit premises. However, on making enquiries, the bailiff found that Defendant's wife was present in the suit premises. It appears that Defendant's wife refused to accept the service of suit summons.

(iii) The third bailiff report dated 27 September 2013 would indicate that the bailiff approached the suit premises on third occasion between 11.00 a.m. to 11.15 a.m. and found the Defendant in the suit premises. The report indicates that the Defendant refused to accept service of the suit summons. Therefore, the bailiff proceeded to paste two copies of the suit summons on the outer door of the suit premises.

4) Perusal of the three bailiff reports would clearly indicate that proper procedure has been followed under Order V Rule 17 of the Code by the serving officer/bailiff by pasting the summons on the outer door of the suit premises. From the three bailiff reports, it is apparent that Defendant's son and wife refused to accept service of the suit summons on two occasions and on the third occasion, the Defendant himself refused to accept the suit summons. Despite pasting the summons on the outer door of the suit premises, the Defendant failed and neglected to appear in the suit and defend the same. In my view, therefore proper service was effected on the Defendant in respect of the suit summons. Therefore, the Trial and the Appellate Court have rightly refused to set aside the *ex-parte* decree on the ground of non-service of the suit summons raised by

the Defendant. The concurrent findings recorded by the Small Causes Court and its Appellate Bench do not warrant any interference in exercise of revisionary jurisdiction of this Court under Section 115 of the Code. The Civil Revision Application is accordingly **dismissed**.

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[SANDEEP V. MARNE, J.]