

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL REVISION APPLICATION NO. 517 OF 2024**

Haridas Sukhu Soni (since deceased)

Thr. Its Legal Heirs

1(a). Saraswati Haridas Soni & Anr.

....Applicants

V/s.

Inraji Mithailal Pasi (since deceased)

1. Pannalal Mithailal Pasi and Ors.

....Respondents

Mr. R. P. Ojha *a/w R. K. Dubey, for the Applicants.*

Mr. Rupesh T. Shirke – Padwal, *for the Respondent Nos. 2 to 4.*

CORAM : SANDEEP V. MARNE, J.

Date : 3 OCTOBER 2024.

P.C. :

1) The Civil Revision Application challenges Judgment and Order dated 3 September 2024 passed by Appellate Bench of Small Causes Court dismissing Miscellaneous Appeal No. 4 of 2024 and confirming the order dated 21 December 2023 passed by the learned Judge of the Small Causes Court, by which MARJI Application No. 19 of 2022 filed by the Applicants for condonation of delay in setting aside *ex-parte* decree under provisions of Order IX Rule 13 of the Code of Civil Procedure, 1908 (**Code**) was rejected.

2) I have heard Mr. Ojha, the learned counsel appearing for Revision Applicants and Mr. Shirke-Padwal, the learned counsel appearing for Respondent Nos. 2, 3 and 4.

3) After having considered the submissions canvassed by the learned counsel appearing for the parties, it appears that the Trial Court, while deciding R.A.E. and R. Suit No. 67/105 of 2007 has recorded a specific finding that Defendant No. 1 was duly served as per the returned postal envelope. It is further held that Defendant Nos. 2 to 5 were duly served as per the bailiff report. Defendant Nos. 1, 2 and 3 are brothers. It is Plaintiffs' case that all 3 were inducted at joint tenants in respect of the suit shop. Though Mr. Ojha has sought to suggest that the packet containing summons in respect of Defendant No.1 has been returned, there is nothing on record to indicate that the said packet has been returned on account of being dispatched at an erroneous address. The Trial Court has perused the remark on the returned envelope and has thereafter recorded a finding of fact that the suit summons was duly served on Defendant No.1. Upon being queried as to whether the address of Defendant No.1 was correctly reflected in the cause title of the suit, Mr. Ojha fairly admits that the same was correctly reflected. Therefore, once the envelope reflecting correct address of Defendant No. 1 has been returned and once the Trial Court has recorded a finding of fact upon perusal of postal remark that the suit summons has been duly served on Defendant No. 1, there is no reason for this Court to disbelieve the said finding recorded by the Trial Court. It is also a matter of fact that Defendant Nos. 2 and 3 are brothers of Defendant No. 1 and they must have informed Defendant No.1 about filing of the suit. This therefore appears to be a case of

voluntary non-appearance in the suit despite service of summons by Defendants Nos. 1 to 3. In my view therefore, no error can be traced in the findings recorded by the Trial Court while decreeing in the suit that the Defendant Nos. 1, 2 and 3 were duly served with the suit summons.

4) The suit came to be decreed on 10 December 2010 whereas the application for setting aside *ex-parte* decree was filed by the Revision Applicants in January 2022 i.e. after 12 long years. No justification is pleaded in the application for condonation of such inordinate delay in seeking setting aside of the *ex-parte* decree. In my view therefore, the Trial Court has rightly rejected MARJI Application No.19 of 2022.

5) Mr. Ojha would strenuously contend that the decree passed by the Trial Court is nullity on account of the fact that there is a valid notification of declaration of the concerned land as Slum. If that is the case, Revision Applicants can also object to execution of the decree by relying on provisions of Section 22 of the Maharashtra Slum Areas (Improvement and Clearance) Act, 1956 (**Slum Act**). The limited issue involved in the present Revision Application is about availability of sufficient justification for condonation of inordinate delay of 3352 days in taking up application for setting aside *ex-parte* decree. While deciding that application, it is not necessary to go into the merits of the suit.

6) In my view therefore, the Trial Court and the Appellate Bench have rightly refused to condone the delay of 3352 days in taking out application for setting aside *ex-parte* decree.

7) Civil Revision Application, being devoid on merits is dismissed without any order as to costs.

8) However, nothing observed in the present order shall come in the way of Revision Applicants raising necessary objections to the execution of the decree, including the objection under Section 22 of the Slum Act.

[SANDEEP V. MARNE, J.]

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