



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

Writ Petition No. 4910 of 2023

[Wasudeo s/o Natthuji Sawarkar ..vs.. Smt. Rekha w/o Rambhauji Bhasme and anr.]

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

Court's or Judge's orders

Mr. A. S. Tiwari, Advocate for the petitioner
Mr. H. I. Kothari, Advocate for respondent no. 1

CORAM : ANIL L. PANSARE J.

DATED : 11-11-2024

The petitioner – original defendant no. 1 is aggrieved by order dated 27-7-2023 passed below Exhibit No. 1 in MJC No. 796/2022 by Civil Judge Senior Division, Nagpur thereby rejecting the application filed by the petitioner for condonation of delay in filing application for setting aside *ex-parte* decree dated 5-1-2022 passed in Summary Civil Suit No. 143/2021.

2. Having heard both sides and having gone through the material placed before me, it appears from the impugned order that the trial Court attributed knowledge of decree to the petitioner on the ground that suit summons was served upon the petitioner through bailiff as well as through Registered Post Acknowledgment Due (RPAD). The knowledge of suit proceedings has been gathered on the basis of report filed by the bailiff and the postal remark on the envelope made by the postal authorities. The bailiff's report show that on 14-7-2021, when he attempted to serve the petitioner, the petitioner's servant was available at the given address. The servant informed the bailiff that petitioner is not in town and refused to accept the suit summons.

3. Pending report of bailiff, the respondent no. 1 moved application before the trial Court seeking permission to serve the petitioner through RPAD. The trial Court granted permission so sought by the respondent no. 1. Accordingly, suit summons was sent through RPAD. However, the envelope containing suit summons returned back unserved with the remark “refused, returned to sender”.

4. It appears from the impugned order that on 28-7-2021, substituted service of summons was also effected through newspaper publication. As such and as argued by learned counsel for the petitioner, the substituted service was permitted to serve the defendant no. 2 (respondent no. 2 herein), however, learned counsel for respondent no. 1 is correct in contending that name of petitioner appears in the notice/summons published in the newspaper.

5. Be that as it may, the fact remains that the petitioner refused to accept the suit summons when attempted to be served through RPAD. It is well settled that such refusal amounts to good service. It cannot be, therefore, said that the petitioner was unaware of the pendency of suit and consequently, the decree passed therein.

6. Learned counsel for the petitioner has relied upon the judgment passed by the coordinate Bench of this Court in the case of ***Jayapaalan S. Pillai Vs. Dinesh Sampatraj Mehta [2022(4) ALL MR 293]***. The coordinate Bench was required to consider provisions of Order 5

Rule 9, Order 9 Rule 13, Order 43 Rule 1 of the Civil Procedure Code, 1908 (for short 'Code') in context with the service of summons to the defendant who resided outside the jurisdiction of the Court. The trial Court therein proceeded *ex-parte* against the defendant upon noting that the suit summons which was attempted to be served through RPAD was returned back with remark "refused to accept". The coordinate Bench held that where the defendant resided outside the jurisdiction of the Court, it will not be proper to straightaway rely upon the service of summons through RPAD, it being not primary mode of service.

7. Such is not the case here. The respondent no. 1 is admittedly resident of Katol, which is within jurisdiction of the Court of Civil Judge Senior Division, Nagpur. Sub-rule (1) of Rule (9) of Order 5 of the Code permits service of summons through courier services as well. Most importantly, the respondent no. 1 sought such permission and Court has granted so and accordingly, an attempt was made to serve petitioner through RPAD who refused to accept the suit summons.

8. In the circumstances, it cannot be said that the petitioner was unaware of pendency of suit as contended by learned counsel for the petitioner.

9. As such, on the point of the bailiff's report, the petitioner's counsel is correct in contending that procedure as prescribed under Rule 17 of Order 5 of the Code has been not followed by bailiff. However, the petitioner failed to convince this Court as to why should the knowledge of

pendency of suit be not attributed to the petitioner on the basis of the report received from postal authority indicating refusal of suit summons.

10. Put altogether, the trial Court has considered the relevant aspects while rejecting the application. No interference is, therefore, called for. The petition is accordingly dismissed.

(Anil L. Pansare, J.)

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