

Jvs.

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

WRIT PETITION NO. 2831 OF 2013

JAYANT
VISHWANATH
SALUNKE

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JAYANT VISHWANATH
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Maharashtra State Electricity	}	
Distribution Company Limited	}	Petitioner
versus		
Vidhyadhar Damodar Mhaiskar & Ors.	}	Respondents

Adv. Niharika Singh i/b. Little & Co. for petitioner.

Mr. Ranjeet H. Patil with Mr. Kuldeep S. Patil and Mr. Dhavalsingh Patil for respondents 3 & 6.

Ms. Srushti Chalke i/b. Mr. Umesh Mankapure for respondent no. 5.

CORAM: ALOK ARADHE, C. J.

DATE: JULY 14, 2025

ORAL ORDER:

1. In this petition under Article 227 of the Constitution of India, the petitioner has assailed the validity of the order dated 18th August 2012 passed by the Trial Court, by which, the application preferred by respondent no. 1 under Order IX Rule 1 of the Code of Civil Procedure, 1908 (CPC) has been allowed and the *ex-parte* judgment and decree has been set aside.

2. Facts giving rise to filing of the writ petition, briefly stated, are that the petitioner has filed a suit seeking recovery of a sum of Rs. 10,12,066.38 along with interest at the rate of 7% p.a. In the aforesaid civil suit, the respondent no. 1 did not appear. The Trial Court on 23rd July 2004, decreed the suit *ex-parte*.

Respondent no. 1 filed an application under Order IX Rule 13, namely, Miscellaneous Civil Application No. 76 of 2008 on 29th March 2009 for setting aside the *ex-parte* decree, which has been allowed by the Trial Court by the impugned order. Hence this petition.

3. Learned counsel for the petitioner submits that the Trial Court ought to have appreciated that summons were duly served on all the respondents and therefore, the Trial Court ought not to have allowed the application under Order IX Rule 1 of the CPC.

4. On the the other hand, learned counsel for respondent no.1 has relied upon the impugned order.

5. I have considered the submissions of both sides and perused the record. From perusal of the record, it is evident that the Trial Court has recorded a finding that the summons issued to the respondent no. 1 has been received with the endorsement that the respondent no. 1 does not reside at the address mentioned on the summons. The Trial Court, however, without taking into account the aforesaid fact, decreed the suit *ex parte*.

6. The impugned order does not suffer from any jurisdictional infirmity or error apparent on the face of the record calling for interference of this Court under Article 227 of the Constitution of India.

7. However, taking into account the fact that the civil suit was filed against respondent no. 1 in the year 1996, the Trial Court is directed to conclude the proceedings of the suit expeditiously, preferably within a period of six months from today.

- 8.** Learned counsel for the respondent no. 1 undertakes to appear before the Trial Court and assures this Court that he will not seek any adjournment.
- 9.** Accordingly, the writ petition is dismissed.
- 10.** Let a copy of this order be communicated to the Trial Court forthwith.

(CHIEF JUSTICE)