

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1686 OF 2025
IN
COMMERCIAL SUMMARY SUIT NO.90 OF 2021

PIYUSH GANGJI CHHEDA)...APPLICANT/ORG.DEFENDANT

IN THE MATTER BETWEEN :

PARAS BHARAT CHHEDA)...PLAINTIFF

V/s.

PIYUSH GANGJI CHHEDA)...DEFENDANT

WITH

INTERIM APPLICATION NO.1368 OF 2025

IN

COMMERCIAL SUMMARY SUIT NO.88 OF 2021

WITH

INTERIM APPLICATION NO.1715 OF 2025

IN

SUMMARY SUIT NO.4 OF 2021

WITH

INTERIM APPLICATION NO.1716 OF 2025

IN

COMMERCIAL SUMMARY SUIT NO.81 OF 2021

Mr.Dinesh Dubey a/w Mr.Pranay Chaugule, Advocate for the Applicant
in IA/1368/2025, 1686/2025, 1715/2025, 1716/2025.

Mr.Amrut Joshi a/w Mr.Maulik K. Tanna Advocate for the Original
Plaintiff/Respondent in IA/1368/2025, 1686/2025, 1715/2025,
1716/2025.

CORAM : ABHAY AHUJA, J.

DATE : 30th APRIL, 2025

ORAL ORDER :

1. These four Interim Applications seek setting aside of four *ex-parte* judgments and orders in favour of the Respondent.
2. Mr.Dinesh Dubey, learned Counsel for the Applicants has submitted that the four applications are based on similar facts and grounds and that he has therefore adverted to facts only in Interim Application No.1686 of 2025 which seeks setting aside of the ex-parte Judgment and Order dated 31st July, 2023 in favour of the Respondent whereby the Applicant was directed to pay a sum of Rs.4,81,02,500/- along with interest at the rate of 12% per annum on the principal sum of Rs.3,55,00,000/- from 1st April, 2018 to 28th February, 2021 and further simple interest at the same rate till actual payment and realization.
3. Mr.Dinesh Dubey, learned Counsel appearing for the Applicant has submitted that the Respondent is the original Plaintiff in the Commercial Summary Suits and the Applicant is the Original Defendant.

4. Mr.Pandit, learned Counsel for the Respondent / original Plaintiff has also addressed this Court in all these Interim Applications with reference to facts in Interim Application No.1686 of 2025 submitting that the relevant facts and issues for the purposes of all these applications are identical. Therefore, this Court for the sake of convenience would refer to facts in the said Interim Application.

5. Today the matters have been listed for Mr.Dubey to conclude his arguments and for Mr.Pandit to rejoind. Both the learned Counsel have concluded their arguments.

6. The main plank of the Applicant's case is that at no point of time, papers and proceedings and so also the writ of summons had been served upon the Applicant and therefore the Applicant could not enter his appearance in the matters. It is submitted that therefore this Court has erroneously proceeded in the matters and passed ex-parte Judgments and Order dated 31st July, 2023 in favour of the Respondent. It is submitted that after the Applicant got to know of the impugned orders, the Applicant has filed for certified copy of the entire papers and proceedings as well as copies of the impugned orders on

20th September, 2023, which were received by the Applicant on 5th October, 2023.

7. Mr.Dubey, learned Counsel has submitted that the service address mentioned in the cause title of the plaint is the same address used by Prince Industries now known as Prince MFG Industries Pvt. Ltd and Prince SWR Industries Pvt. Ltd and carries on business from the said address which is their registered office. That one M/s. Midas Impex Pvt. Ltd by invoking Section 9 of the Insolvency & Bankruptcy Code, 2016 filed Company Petition against the Prince SWR System Pvt. Ltd (the “said Company”/the “Corporate Debtor”) and initiated the Corporate Insolvency Resolution Process (“CIRP”). The National Company Law Tribunal (“NCLT”), Mumbai after hearing the parties passed an order dated 16th April, 2021, whereby CIRP was initiated against the said Company wherein the Applicant was holding the post of Director.

8. Mr.Dubey, learned Counsel has further submitted that Affidavit of Service dated 28th October, 2021 that has been filed by the clerk of the Sheriff of Bombay clearly show that packets containing the copy of the Writ of Summons as well as the Plaint dispatched to the Defendant was returned with the remark “Unclaimed return to Sender” on 1st

October, 2021 and therefore, the writ of summons had never been served upon the Applicant at any point in time.

9. Mr.Dubey, learned Counsel has also submitted that the NCLT has prohibited : institution of Suits and continuation of pending Suits against Prince SWR System Pvt. Ltd. including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor viz. Prince SWR System Pvt. Ltd any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (“SARFAESI”), the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor. Mr.Dubey, learned Counsel submits that during the CIRP period, the management of the corporate debtor vests in the IRP/RP, and Board of Directors is suspended and the Board and the employees of the corporate debtor are to provide all documents in their possession and furnish every information in their knowledge to the Interim Resolution Professional (“IRP”)/Resolution

Professional (“RP”). That in view of the aforesaid prohibition also the Suits could not have been filed or proceeded with.

10. It has been submitted by Mr.Dubey, learned Counsel for the Applicant that due to initiation of the CIRP against the corporate debtor, the Board of Directors including the Applicant was suspended immediately resulting that the Applicant had stopped using the office premises whereupon the alleged service has been effected.

11. Mr.Dubey, learned Counsel for the Applicant has attempted to persuade this Court to believe that the Applicant’s address is Plot No. 360, Flat No.601, Floor :-6, Kachra Napoo Co-operative Housing Society Limited, Bhandarkar Road, Matunga (East) (Central), Mumbai – 400 019 and Flat No.2804, ICC Two, Island City Centre, G.D. Ambedkar Road, Dadar East, Mumbai-400014 and not the address at which the service has been effected which is the registered office of Prince SWR System Pvt. Ltd.

12. In support, Mr.Dubey, learned Counsel has tendered across the bar Housing Society Receipt of K.N. Co-operative Housing Society Ltd as well as Mahanagar Gas Limited bill containing the name of the

Applicant as well as Company information of the Ministry of Corporate Affairs with respect of Prince SWR System Pvt. Ltd.

13. Mr.Dubey, learned Counsel has further submitted that on 6th September, 2023, the Respondent's Advocate sent a letter notifying the Applicant about the *ex-parte* orders issued in the Suits and this communication has been addressed to the Applicant's residence at Flat No.2804, ICC Two, Island City Centre, G.D. Ambedkar Road, Dadar East, Mumbai-400014.

14. That the Respondent was clearly aware of the Applicant's addresses and has deliberately pursued service of writ of summons on a different address earlier to malafidely obtain favourable order from this Court.

15. Mr.Pandit clarifies that the decrees were posted on three addresses including the address on page no.11 of the application viz. Flat No.2804, ICC Two, Island Centre, G.D.Ambedkar Road, Dadar East, Mumbai-400 014. That the packets of service of the decree on the two addresses were returned with the remark "unclaimed", however the service on the address at page 11 viz. Flat No.2804, ICC Two, Island

Centre, G.D.Ambedkar Road, Dadar East, Mumbai – 400 014, which was obtained by the Plaintiff from a broker, was effected.

16. As regards the Bailiff's report dated 13th December, 2021, which indicates that writ of summons was purportedly served on one S.S. Kadam, the Manager of the Applicant on 13th December, 2021, at about 01:30 p.m, Mr.Dubey, learned Counsel has submitted that during the Bailiff's visit, Prince Industries was undergoing CIRP and all offices and management were under the control of the IRP/RP appointed by the NCLT. That the Bailiff ought to have verified the identity of the representative claiming to be the representative of the Applicant which was not done. That the acknowledgment has been signed by Mr.S.S. Kadam displays two distinct signatures on the same document and there is possibility of alteration by the Respondent's representative. Mr.Dubey, learned Counsel submits that the Applicant has never appointed or employed any manager by the name of Mr.S.S. Kadam in any of his Company(ies), during the course of business as a authorized representative.

17. Mr.Dubey, learned Counsel submits that due to the aforesaid reason, the Applicant was never served copy of the papers and

proceedings and therefore could not appear in the matter for filing leave to defend resulting in the passing of the impugned ex-parte orders.

18. Mr.Dubey, learned Counsel submits that Applicant has a good case on merits and that without a fair opportunity injustice would be meted out to the Applicant.

19. Mr.Dubey, learned Counsel submits that the balance of convenience is in favour of the Applicant and grave harm, prejudice and loss would be caused to the Applicant if the Applications are not allowed.

20. Mr.Dubey, learned Counsel accordingly submits that the Applications be allowed and the ex-parte orders dated 31st July, 2023 be set aside and the matters be restored for a fresh hearing after granting an opportunity to file applications for leave to defend to the Applicant.

21. On the other hand, Mr.Amrut Joshi, learned Counsel appears for the Original Plaintiff and submits that service of the writ of summons

had duly been effected on the address of the Applicant as can be seen from the Bailiff's report at page 39. Mr.Joshi, learned Counsel submits that the address of the Defendant and that the service was effected upon Mr.S.S. Kadam, Manager has not been disputed. What is being emphasized is that due to the initiation of the CIRP proceedings, the Applicant was Director of Prince SWR System Pvt. Ltd had stopped using the said office premises where the service has been effected.

22. Mr.Joshi, learned Counsel submits that in fact in Bombay City Civil Court Summary Suit No.174 of 2022, the service has been effected on the very same address as in this case and draws attention of this Court to the Bailiff's report in the said Suit at page No.254 of the Reply in support of his contentions. Mr.Joshi, learned Counsel submits that even in the proceeding before the 56th Court, Metropolitan Magistrate, the process has been issued at the very same address and where the Applicant has appeared through his Advocate. Mr.Joshi, learned Counsel also refers to the Roznama of the 56th Metropolitan Magistrate's Court at pages 268 and 269 of the Reply in support of his contention.

23. As regards the packet containing copy of the writ of summons as well as copy of the plaint which was dispatched to the Defendant having been returned with the remark “Unclaimed return to Sender” on 1st October, 2021 and which has admittedly exhibited in the affidavit of service dated 28th October, 2021, which has been affirmed by the clerk Sheriff of Bombay, Mr.Joshi, learned Counsel further submits that in view of the decision in the case of *C.C. Alavi Haji Vs.Palapetty Muhammed*¹, and *Priyanka Kumari Vs. Shailendra Kumar*² whereby it has been held that the remark “Unclaimed return to sender” is to be considered as duly served, the submission made by the Applicant in ground (vi) while submitting that writ of summons was never served upon the Applicant at any point of time, is without substance and be rejected.

24. Mr.Joshi, learned Counsel has further submitted that just because a corporate debtor viz. Prince SWR System Pvt. Ltd is undergoing CIRP wherein the Applicant was holding the post of Director does not mean that no proceedings can be initiated or continued against a Director. Referring to the order dated 16th April, 2021, Mr.Joshi, learned Counsel points out that the order passed by the NCLT prohibits institution and

1 2007 (6) SCC 555

2 Transfer Petition(s)(Civil) No.2090 of 2019 dated 13th October, 2023.

continuation of Suits against the corporate debtor viz. Prince SWR System Pvt. Ltd and not institution or continuation against the Applicant. That the moratorium referred to in the said order also does not apply to the Applicant but only to the corporate debtor viz. Prince SWR System Pvt. Ltd. That therefore, the ground Prince SWR System Pvt. Ltd be under CIRP also therefore deserves to be rejected.

25. Mr.Joshi, learned Counsel relied upon the decision of the Hon'ble Supreme Court in the case of *Rajni Kumar Vs. Suresh Kumar Malhotra and Another*³, *BIR Singh Vs. Mukesh Kumar*⁴, and of this Court in the case of *Purnendu Shekharmal Jain Vs. ACG Associated Capsules P. Ltd*⁵., submit that only under special circumstances a decree can be set aside under Order XXXVII Rule Rule 4 of the Code of Civil Procedure, 1908 ("CPC") and although non service of summons will undoubtedly be a special circumstance, which is not the case here, but even if it were so, the Court has to determine the question, on the facts of each case, as to whether circumstances pleaded are so unusual or extraordinary as to justify putting the clock back by setting the decree. Mr.Joshi, learned Counsel would submit that it is not enough for the Defendant to show

3 (2003) 5 Supreme Court Cases 315

4 (2019) 4 Supreme Court Cases 197

5 2017 SCC OnLine Bom 107

special circumstance which prevented him from appearing or applying for leave to defend but he has to show by affidavit or otherwise facts which would entitle him leave to defend the Suit.

26. Mr.Joshi, learned Counsel submits that in the Rejoinder, the applicant has only raised four issues on merits for seeking leave to defend : firstly, that the Plaintiff does not have a money lender license. Mr.Joshi, learned Counsel submits that by several decisions of this court it has been held that the transactions of similar nature as in this Suit are not to be considered as money lending transaction. Mr.Joshi, learned Counsel submits that this is a case where in the past the Defendant has also returned the money. Secondly, on the contention that the promissory notes are fabricated, Mr.Joshi, learned Counsel submits that these are bald allegations without any supporting documents. Thirdly, on the contention that the accounts have been fabricated, Mr.Joshi, learned Counsel again submits that these are Plaintiff's accounts which have been audited and therefore audited accounts cannot be considered as fabricated based on bald allegations. Fourthly, on the contention that blank cheques were issued, Mr.Joshi, learned Counsel has relied upon the decision of the Hon'ble Supreme Court in the case of *BIR Singh Vs. Mukesh Kumar (supra)* to submit

that even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment would attract presumption under Section 139 of the Negotiable Instruments Act, 1881, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt. Mr.Joshi, learned Counsel submits that no such evidence rebutting the presumption has been brought before this Court.

27. Mr.Joshi, learned Counsel submits that therefore, the twin conditions for applicability of the special circumstances under Order XXXVII Rule 4 of the CPC have not been met and that therefore, this Application deserves to be dismissed.

28. As noted above, I have heard the learned Counsel in the matter and considered their submissions.

29. Before proceeding further it would be apposite to quote Order XXXVII Rule 4 of the CPC.

“Order.XXXVII — Summary Procedure

(1)-(3)

(4) Power to set aside decree — After decree the court may, under special circumstances, set aside the decree, and if necessary stay or set aside execution, and may give leave to the defendant to appear to the summons and to defend the suit, if it

seems reasonable to the court to do so, and on such terms as the court thinks fit.”

30. Reading of the afore-quoted Rule 4 clearly indicates that the said Rule empowers the Court which passed an *exparte* decree under Order XXXVII to set aside the decree and grant one or both of the following reliefs, under special circumstances and if the Court deems it reasonable to do so and on such terms as the Court thinks fit :

- (i) to stay or set aside execution, and
- (ii) to give leave to the defendant (a) to appear to the summons, and (b) to defend the suit.

31. The expression “special circumstances” as has been noted in the decision of the Hon’ble Supreme Court in the case of *Rajni Kumar Vs. Suresh Kumar Malhotra and Another (supra)*, is not defined in the CPC nor is it capable of any precise definition by the Court. Ordinarily it connotes something exceptional in character, extraordinary, significant, uncommon, antonym of common, ordinary and general. In the said decision it has been held that it is neither practicable nor admissible to enumerate such circumstances, however, non service of summons has been held to be a special circumstance. In an Application under Order XXXVII Rule 4 of the CPC, the Court has to determine the question, on the facts of each case, as to whether circumstances pleaded are so

unusual or extraordinary as to justify putting the clock back by setting aside the decree; to grant further relief in regard to post-decree matters, namely, staying or setting aside the execution and also in regard to pre-decree matters viz. to give leave to the defendant to appear to the summons and to defend the Suit.

32. In the said decision it has also been provided that in considering an application to set aside the *exparte* decree it is necessary to bear in mind the distinction between the Suits instituted in an ordinary manner and Suits filed under Order XXXVII of the CPC. Rule 4 of Order XXXVII of the CPC specifically provides for setting aside a decree. The provisions of Order 9 Rule 13 will not apply to Suit filed under Order XXXVII. In a Suit under Order XXXVII, the procedure for appearance of the Defendant is governed by the provisions of Rule 3 thereof. A Defendant is entitled to defend the Suit unless he enters appearance within 10 days of service of summons either in person or by a pleader and files in Court an address for service of notices on him. In default of his entering appearance, the Plaintiff becomes entitled to a decree for a sum not exceeding the sum mentioned in the summons together with interest and costs. The Plaintiff also becomes entitled to judgment in terms of Rule 3(6). If the Defendant enters appearance the Plaintiff is

required to serve on the Defendant a summons for judgment within 10 days; from service of such summons for judgment the Defendant is to seek leave of the Court to defend the Suit which will be granted on disclosure of such facts as may be deemed sufficient to entitle him to defend and such leave may be granted to him either unconditionally or on such terms as the Court may deem fit.

33. The power under Rule 4 of the Order XXXVII is not just confined to setting aside an *ex parte* decree, it extends to staying or setting aside the execution and giving leave to appear to the summons and to defend the Suit as the very purpose of Order XXXVII is to ensure an expeditious hearing and disposal of the Suit filed thereunder. Rule 4 empowers the Court to grant leave to the Defendant to appear to summons and defend the Suit if the Court considers it reasonable to do so. In such an application it is not enough for the Defendant to show special circumstances which prevented him from appearing or applying for leave to defend, he has also to show by affidavit or otherwise, facts which would entitle him leave to defend the Suit and that is why in Rule 4 the Court is also empowered to grant leave to the Defendant to appear to the summons and to defend the Suit, if the Court considers it reasonable to do so on such terms as the Court thinks fit in addition to

setting aside the decree. Also it is not enough for the Defendant to show special circumstances which prevented him from appearing or applying for leave to defend but he has to show by affidavit or otherwise facts which would entitle him leave to defend the Suit.

34. In the case of *Purnendu Shekharmal Jain Vs. ACG Associated Capsules P. Ltd (supra)*, a Division Bench of this Court has reiterated the above principle set out by the Hon'ble Supreme Court in the case of *Rajni Kumar Vs. Suresh Kumar Malhotra and Another (supra)*, in paragraph 13, as under :

“13. As clearly held by the Supreme Court, it is not enough to show the special circumstances which prevented him from appearing or applying for leave to defend, he has also to show by affidavit or otherwise, the facts which would entitle him to leave to defend the suit. In that respect, Rule 4 of Order XXXVII is different from Order IX Rule 13. In other words, not only must the Defendant show that there was good cause in not appearing in answer to the writ of summons, but that he has at-least prima facie material which would entitle him to leave to defend the suit filed under the provisions of Order XXXVII.”

35. No doubt as per settled law as discussed above, to set aside a decree and Order XXXVII Rule 4 of the CPC, the defendant has not only to show special circumstance(s) which prevented him from appearing or applying for leave to defend but he has to show by affidavit or otherwise facts which would entitle him leave to defend the suit. Both

the conditions have to be met in the cumulative. This means that even if one of the condition is not met the Applicant cannot succeed.

36. Therefore, let us first examine whether the defendant has shown any special circumstances which prevented him from applying for leave to defend in time. As noted above non-service of writ of summons is undoubtedly a special circumstance. Therefore, what this court has to first determine is whether in fact this is a case of non-service of writ of summons.

37. Mr Dubey, learned Counsel has submitted that the address at which the service was effected was not being used by the Applicant as the company in which he was director was undergoing CIRP and that even otherwise Mr.S.S. Kadam on whom the service was effected was not employed by him and that therefore, the service ought to have been effected at the residential addresses on one of which the decrees were also served. That therefore, this is a case of non-service of writ of summons and special circumstance to set aside the decrees dated 31st July, 2023.

38. As regards the service by the Indian postal system as per affidavit of service dated 28th October 2021, duly affirmed by the clerk of the sheriff of Bombay, admittedly the packet has been returned unclaimed return to sender on 1st October 2021. The decision of the Hon'ble Supreme Court in the case of *C.C. Alavi Haji Vs. Palapetty Muhammed (supra)* and *Priyanka Kumari Vs. Shailendra Kumar (supra)*, clearly indicate that return of a packet with the remark "unclaimed" is to be considered as duly served. Accordingly, I agree with the learned counsel for the Respondent that the service as recorded in affidavit of service dated 28th October 2021 is to be treated as good service.

39. Coming to the service effected on Mr.S.S. Kadam the at 101/102, Sunshine Plaza 1st floor, Naigaum Cross Road, Dadar (E), Mumbai-400014, Mr Joshi is right that service to Mr.S.S. Kadam has not been disputed nor that the said address is not of the Defendant. What Mr.Dubey has submitted is that since Prince SWR System Pvt. Ltd, was under CIRP and the Board of Directors including the Applicant was as Director was suspended, the Applicant had stopped using the said premises. No evidence or document has been brought before me to demonstrate or establish that this information had in any manner been communicated to the Respondent (original Plaintiff). Therefore, in my

view even if Plot No. 360, Flat No.601, Floor :-6, Kachra Napoo Co-operative Housing Society Limited, Bhandarkar Road, Matunga (East) (Central), Mumbai – 400 019 and Flat No.2804, ICC Two, Island City Centre, G.D. Ambedkar Road, Dadar East, Mumbai-400014 demonstrably are the Applicant's residential addresses and even if the advocate for the original Plaintiff/Respondent herein has sent a letter dated 6th September 2023 notifying the Applicant about the *ex-parte* orders passed in the suit to an address other than the one to which the service has been effected, it cannot be said that no service had been effected upon the Applicant which prevented him from entering appearance in the matter.

40. It is also pertinent to note and which fact has not been disputed on behalf of the Applicant that in Bombay City Civil Court, Summary Suit No. 174 of 2022, service has been effected upon the Applicant at the very same address as in the facts of this case and the Bailiff's Report in the said suit at page 254 of the reply is a testimony of the same. Also the proceeding before the 56th Court, Metropolitan Magistrate where process has been issued at the very same address and in which matter the Applicant has appeared through his advocate which is at pages 268 and 269 of the Respondents reply also bears testimony of the fact that

the address at which the service has been effected is also the other address used by the Applicant.

41. Mr.Dubey, learned Counsel has also submitted that the Bailiff ought to have verified the identity of the representative claiming to be the representative of the Applicant which was not done. No evidence to this effect has been brought before me. Bailiffs of the Sheriff's Office follow a protocol before effecting service and until and unless breach of such protocol with supporting evidence of documents is brought before this court a bald allegation of the same cannot be accepted. Further the claim that the acknowledgment as signed by Mr.S.S.Kadam displays two distinct signatures on the same document and there is a possibility of alteration by the Respondent's representative also deserves to be *in limine* rejected as a bald and baseless allegation, as no evidence supporting document to demonstrate the same has been brought before me. That Mr.S.S.Kadam had not been employed nor any other manager had been appointed in due course of business as an authorised representative of the Applicant or any of his companies in my view is also a baseless submission as no material or document has been brought before me to suggest the same.

42. There are no malafides established before me. Mr.Pandit has already clarified that the decrees were posted on three addresses including the address on page no.11 of the application viz. Flat No.2804, ICC Two, Island Centre, G.D.Ambedkar Road, Dadar East, Mumbai – 400 014. That the packets of service of the decree on the two addresses was returned with the remark “unclaimed”, however the service on the address at page 11 viz. Flat No.2804, ICC Two, Island Centre, G.D.Ambedkar Road, Dadar East, Mumbai – 400 014, which was obtained by the Plaintiff from a broker, was effected. The same has not been disputed by Mr.Dubey except to say that soon after the Decrees were received by the applicant on 6th September 2023 at Flat No.2804, ICC Two, Island City Centre, G.D. Ambedkar Road, Dadar East, Mumbai-400014, these applications have been filed on 31st October 2023. In my view, nothing would turn on this submission as the writ of summons have already been held to be duly served on the Applicant on 101/102, Sunshine Plaza 1st floor, Naigaum Cross Road, Dadar (E), Mumbai-400014 and it has not been disputed by the Applicant that, that was not his address but that he had only stopped using the said address but never communicated the non use to the Plaintiff. It is settled law that if there are more than one addresses of

the Defendant and service has been effected or deemed effected on even one of the addresses, that is valid and effective service.

43. Fair opportunity, in my view, has been afforded and there is no question of injustice. On the contrary, entertaining such applications would result in injustice to the original Plaintiff.

44. An attempt to thwart decrees passed by this court following due process in accordance with the special procedure under Order XXXVII of the CPC, in this manner, is, in my view an abuse of process of law which deserves to be met with imposition of costs upon the Applicant.

45. Once it has been held that the service was duly effected by the Respondent, it would not be necessary to consider the second condition for setting aside a Decree and Order XXXVII Rule 4 of the CPC viz. facts which would entitle the Applicant leave to defend the suit.

46. In this view of the matter, it would not be necessary to deal with the other decisions cited in the matter.

47. There is one more objection/ground that has been raised on behalf of the Applicant to set aside the Decree and that is that the order dated 16th April 2021 passed by the NCLT prohibits institution and continuation of suits against the said company/corporate debtor viz Prince SWR System Private Limited. A bare perusal of the said order clearly indicates that the said prohibition is with respect to institution and continuation of suits only against the said company and not against the Applicant. Accordingly the moratorium referred to in the said order does not apply to the Applicant but only to the corporate debtor/the said company. Accordingly the said objection/ground is also rejected.

48. Accordingly I find no merit in these applications and the same are hereby dismissed.

49. However, in view of the aforesaid observations and finding that this is only a frivolous and vexatious attempt to thwart Judgments/Decrees passed by this court, I direct the Applicant to pay costs of ₹ 1 lakh to the Respondent within a period of three weeks.

(ABHAY AHUJA, J.)