



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 98 OF 2025

SHAIKH NAIM SHAIKH LAL

VERSUS

SAYYED KALEEM SAYYAD ISMAIL AND OTHERS

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Advocate for Applicant : Mr. Agrawal Pawankumar S.
Advocate for Respective Respondents : Mr. Pathan H. I.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 10.03.2026

PER COURT :-

1. Heard both sides.
2. The applicant/original plaintiff is assailing judgment and order dated 28.03.2024 passed by the Wakf Tribunal in Misc. Application No.15 of 2021, setting aside ex-parte decree.
3. Applicant has filed Wakf Suit No.177 of 2018 for eviction against the present applicants as well as other five persons. Respondents are original defendant Nos.1, 2 and 5. It was reported that there was proper service of notice upon them. Hence, suit was directed to proceed ex-parte against them vide order dated 16.02.2019. Other defendants appeared in the matter. Tribunal decreed the suit vide judgment dated 05.04.2021.
4. When decree was put to the execution, respondent Nos.1, 2 and 5 received notices of the execution through bailiff

and they learnt about the ex-parte decree passed against them. Being aggrieved miscellaneous application No.15 of 2021 was preferred under Order IX Rule 13 of the CPC. Application was allowed by impugned order holding that there was no proper service of notice upon them and decree was passed behind their back.

5. Learned counsel for the applicant Mr. Agrawal submits that the address shown in the suit as well as in execution proceedings of the concerned respondents is same and therefore, the theory put forth by them is misconceived. It is further submitted that Tribunal committed error of jurisdiction in considering the postal report at Exh.88, 90 and 108 for holding that there was no proper service of notices. It can be at the most inferred to be irregularity but not the illegality. It is submitted that one of the defendants had challenged the decree in CRA.No.35 of 2022 in High Court. Respondent Nos.1, 2 and 5 were parties before High Court and they had knowledge about the decree passed by the Tribunal.

6. Per contra, learned counsel Mr. Pathan submits that the Tribunal is justified in holding that there was no due service of notices upon the respondents and the documentary evidence is rightly appreciated by the Tribunal. It is submitted that without

proper verification, the suit proceeded ex-parte and it was decreed behind back of the respondents. It is further submitted that the respondents could receive the notices in execution proceedings and therefore, there is no reason to infer as to why they would not appear before the Tribunal after service of summons in the suit.

7. I have considered rival submissions of the parties. The Tribunal after issuing notices entrusted the job of serving the defendants on the plaintiff. It was shown that the defendants were served through post. It was reported that despite service, respondent Nos.1, 2 and 5 did not respond and the matter was directed to be proceeded ex-parte vide order dated 16.02.2019. In the absence of the respondents, the decree was passed.

8. The Tribunal has meticulously gone through the receipts filed at Exh.88, 90 and 108. After conducting necessary objective scrutiny by reasoned order it has been concluded that there was no service of notices on respondent Nos.1, 2 and 5. I do not find that there is any perversity or illegality in the findings recorded by the Tribunal.

9. The Proviso 2 to Order IX Rule 13 spells out that ex-parte decree should not be set aside merely on the ground of irregularity. In the present matter, it cannot be said that there

is mere irregularity in the service of summons on respondent Nos.1, 2 and 5. It's a case of grave illegality in showing that they were served. The respondents appeared in pursuance of the service of notice through bailiff in execution proceedings when identical address was shown. There is no reason to infer that respondent would not have appeared had there been due service of summons in the suit.

10. One of the defendants had filed civil revision application No.35 of 2022. Respondent Nos.1, 2 and 5 were also parties to the revision. They did not cause their appearance in the revision. The revision was ultimately disposed of vide order dated 18.01.2023 as applicant did not comply earlier order passed by this Court. Before filing of the civil revision application No.35 of 2022, recourse was taken by the present respondents under Order IX Rule 13 of CPC. Therefore, no benefit of this situation can be given to the applicant. They had no knowledge of the decree passed against them. I am of the considered view that the decree was passed behind their back and they are justified in approaching the Tribunal.

11. Learned counsel for the applicant is unable to point out from record as to on what basis the inference was drawn by the Tribunal that the respondents were duly served. I find that

the findings recorded by the Tribunal in allowing the applications are plausible and reasonable. Those are in consonance with principles of natural justice. I do not find that there is any case made out to cause any interference in the impugned order.

12. Civil revision application is rejected.

13. The suit is of 2018, hence, the Tribunal is requested to decide the suit expeditiously as early as possible within a period of twelve months from today.

(SHAILESH P. BRAHME, J.)

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