IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4293 OF 2011
WITH
INTERIM APPLICATION NO. 7255 OF 2026
IN
WRIT PETITION NO. 4293 OF 2011

Shankar Dhondu Salamvade And Ors. **... Petitioners**

Versus

Anselm Fabian Misquitta And Ors. **... Respondents**

Mr. Sudhir Sadavarte, *for Petitioners/Applicants.*

Ms. Leena Patil, 'B' Panel a/w Ms. S. R. Crasto, AGP for Respondent-State in IA.

CORAM : SANDEEP V. MARNE, J.

DATE : 1 OCTOBER 2026.

P.C. :

1) The Petition challenges Judgment dated 20 June 2009 passed by the Small Causes Court at Bombay, rejecting the Miscellaneous Notice No. 143 of 2009 filed by the Petitioners/Defendant No.1 under provisions of Order 9 Rule 13 of the Code of Civil Procedure, 1908 for setting aside ex parte decree dated 21 December 2006.

2) I have heard Mr. Sadavarte, the learned counsel appearing for Petitioners and have considered the submissions canvassed by him. None has appeared on behalf of the Respondents.

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3) The Petition has been admitted by Order dated 21 December 2011. While admitting the Petition itself, this Court has made an observation that possession of the premises was already taken over by the Plaintiff.

4) Petitioners claim to be the original tenants in respect of the suit premises. The suit was filed by the Plaintiffs seeking eviction of the Petitioners from suit premises, *inter alia,* on the grounds of arrears of rent and also parting with possession of premises to Defendant No.2. The findings recorded by the Trial Court would indicate that before filing of the suit, the Plaintiffs attempted to serve a notice on the Petitioners but the packets containing the notice were returned as 'unclaimed and refused'. Therefore, Plaintiff personally visited the suit premises and attempted to serve the notice, when he found Defendant No.2 occupying the suit premises. When suit summons was attempted to be served, it appears that the bailiff did not find Petitioners present in the suit premises. Accordingly, the suit summons was pasted at the premises. It appears that a substituted service was also attempted in respect of the suit summons, but the packet containing the summons was returned with a remark 'intimation posted'.

5) Though Petitioners sought to set up a case that the bailiff was managed, they did not bother to apply for conducting cross-examination of the bailiff. More importantly, when decree was sought to be executed and the bailiff approached the property for execution of warrant of possession, once again, Defendant No.2 was fond occupying the suit premises. The Plaintiff was again not present in the suit premises. The possession of the suit premises is ultimately taken over

from Defendant No.2 and not from the Petitioners. It cannot be a matter co-incidence that, on three different occasions, Petitioners were not found in the suit premises i.e. when pre-suit notice was sought to be served, when summons in the suit was sought to be served and when possession was taken away by the Plaintiff.

6) In my view, therefore, no case was made out for setting aside ex parte decree. The Small Causes Court has rightly rejected Miscellaneous Notice No. 143 of 2009. The Writ Petition is accordingly **dismissed**. Rule is discharged. There shall be no order as to costs.

7) In view of dismissal of the Writ Petition, nothing would survive in the Interim Application and the same stands **disposed of**.

[SANDEEP V. MARNE, J.]