

(1986) 04 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 1447 of 1984

Ahmed Khan

APPELLANT

Vs

Gracy D'Souza (Miss)

RESPONDENT

Date of Decision : 03-04-1986

Acts Referred:

Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 — Section 29
Civil Procedure Code, 1908 (CPC) — Order 5 Rule 17, Order 5 Rule 19, 144, 47
Powers of Attorney Act, 1882 — Section 2

Citation : (1986) 2 BomCR 612 : (1986) MhLj 764

Hon'ble Judges : S.J. Deshpande, J

Bench : Single Bench

Advocate : K.K. Vyas, for the Appellant; C.R. Menon, for the Respondent

Judgement

S.J. Deshpande, J.—The writ petition under Article 227 of the Constitution of India is filed by the original defendant. Respondent is the original plaintiff. Petition arises out of an application made by the defendant with a prayer to set aside the ex parte decree in Suit No. 763/2405/81 of the Small Causes Court, Bombay.

2. The aforesaid suit was filed by the original plaintiff following provisions of the Bombay Rent Act against the defendant, on the grounds of arrears of rent, sub-letting and unauthorised construction and praying for possession of the premises. In this suit, the respondent-plaintiff could not serve the defendant in proper way. He obtained order from the Court for substituted service. On the strength of the substituted service, the Small Cause Court passed an ex parte decree for delivery of possession of the suit premises on 2nd November, 1982.

3. The suit premises is situated at Bombay. It is a shop premises wherein the defendant is alleged to have been carrying on business.

4. In or about June 1983, one Zaitum Begum described herself to be power of attorney and wife of the original defendant, commenced the present proceeding

by Misc. Notice No. 273 of 1983 before the Small Cause Court, Bombay, contending that the ex parte decree was obtained by the plaintiff without proper service. It was contended on behalf of the petitioner-original defendants that there was no arrears of rent at all. The plaintiff has avoided to accept the payment of rent when it was tendered. It was further contended that the business premises were locked. It was also contended that the plaintiff has taken advantage of the absence of the original defendant who is out of India and it appears that Zaitum Begum, wife of the defendant made application to the Court to set aside the ex parte decree passed against her husband, then the plaintiff got possession of the suit premises in execution of the decree on 16th March, 1983. On 17th March, 1983, the shop premises were demolished by the plaintiff. It appears that an affidavit was filed by Zaitum Begum on 19th March, 1983 that the decree was executed and premises were demolished and, therefore, she made a prayer that the ex parte decree dated 2nd November, 1982 be set aside and also prayed for interim relief, stating that the original plaintiff be restrained from dealing with the property. On this application interim order in terms of prayer (c) was granted by the Court, after issuing rule and making it returnable on 15th April, 1983.

5. Plaintiff has filed reply to this affidavit. In reply, it was contended that there was earlier two applications which were made by third persons to set aside the ex parte decree and the same were also rejected by the Court. It was stated that service of summons which was made in the suit was quite proper. Tender of rent alleged by the defendant was denied by the plaintiff. It was admitted by the plaintiff that he obtained possession of the property in execution of the decree on 14th March, 1983. However, he denied other contents. He disputed that fraud was committed and stated that the decree obtained by him was valid. In concluding portion of reply, plaintiff stated as follows :

"I further submit that after taking the possession of the suit premises pursuant to the ex parte decree. On 17-3-1983 I have demolished the structure and the suit premises do not exist from 17-3-1983 as such this application for restoration of possession has become infructuous and no order can be passed in favour of premises and application be dismissed with costs."

This is exceptional case. Therefore, I have recited these two prayers. Plaintiff had obtained ex parte decree against the defendant in March 1983. He also obtained possession of the suit premises and immediately he demolished the suit premises on his own admission on 17th March, 1983.

6. Under these circumstances, the defendant, who had suffered the ex parte decree was bound, to apply to the Court within time, knowing that not only the decree was executed, but the premises were also demolished. Application for setting aside the decree contained prayer that decree may be set aside and since structure is already demolished, appropriate orders may be passed.

7. It is these proceedings which were tried by the Small Cause Court, Bombay.

After hearing the parties and recording the evidence and by way of affidavits, the ex parte decree was set aside. It was found by the learned Judge of the Small Cause Court that the service of summons which was made in this case to the premises of the defendant was quite inadequate and insufficient. Two circumstances were relied on by the plaintiff viz. (i) registered acknowledgment of the packet which was sent to the defendant and secondly, substituted service which was effected on 31st July, 1981. The Small Cause Court held that writ of summons was not received by the defendant as alleged by the plaintiff and it is also observed that plaintiff has not clarified in which circumstances the acknowledgment can be attributed to the defendant. The Small Cause Court, therefore, held that there was sufficient cause for setting aside ex parte decree against the defendant. The Court, therefore, ordered that the ex parte decree be set aside and plaintiff was directed to reconstruct the premises as it was found that the plaintiff has demolished the premises immediately after taking possession and this act of the plaintiff was treated to be mala fide conduct. Therefore, the Small Cause Court directed reconstruction of the premises by its order dated 16th July, 1983.

8. Plaintiff had raised contention before the Small Cause Court, that application filed by the defendant is constituted Attorney of the defendant i.e. his wife and hence it was not maintainable. The alleged Power of Attorney which was filed before the Court was not a valid power of attorney to clothe her with authority to file this proceeding. It was also contended that the service of summons on the defendant was quite sufficient as in case of shop premises service by pasting was adequate and it was also contended that he had sent a registered packet and acknowledgment bears the signature of the defendant. It was contended by the learned Advocate for the plaintiffs in the courts below that in any case, pursuant to the affidavit filed by the defendant herself, that one employee was already working and as such employee was able to sign the acknowledgment and plaintiff having accepted this registered packet as being signed by the employee, admission of the defendant that one employee was there working was pressed into service to contend that in any case, the defendant had knowledge of proceedings and ex parte decree was, therefore, maintainable. This contention, was rejected by the Small Cause Court and he held that there was sufficient cause as service of summons was not sufficient and it was not properly served on the defendant. It, therefore, set aside the decree.

8-A. Against the order of setting aside the ex parte decree by the Small Cause Court dated 16th July, 1983 the plaintiff filed Revision Application before the Appellate Bench of the Small Cause Court, Bombay u/s 29 of the Bombay Rent Act. It was heard by the Appellate Bench as Revision Court and the Court has set aside the order passed by the learned Judge of the Small Cause Court on the ground that the power of attorney which was filed by the defendant on record does not authorise the defendant's wife to file the present proceeding. It held that the service which is made on the defendant is quite sufficient. In para 9 of their judgment, the Appellate Bench has discussed the point in regard to

competency of the wife of the defendant to file the present application on the strength of the power of attorney. In para 10 the Court has given discussion about the service of writ on the defendant. In this connection, it may be pointed out that the suit seems to have been dismissed for default on 16th December, 1981. It was dismissed as both the parties were absent. Again, it was restored on 23rd December, 1981. It appears that the Court had directed fresh summons to be issued making it returnable on 9th February, 1982. It is in this circumstances that registered notice was sent to the defendant on 18th March, 1982 and this letter was acknowledged by the defendant which is being relied as good service for the purpose of application for setting aside ex parte decree also. The Revisional Court found that there was no reason to set aside the ex parte decree. Reasoning of the revisional Court seems to be that it was for the defendant to explain as to why service on an employee was not sufficient. Revisional Court has observed that:

"If we consider all these aspects of the case, then we are unable to know how and for what reasons the present respondent could be considered as not duly served in the case and how this application for setting aside the ex parte decree made through his wife so-called C.A. can be considered within the time limit, and how it can be considered as not time barred. We thus feel that respondent failed to prove all these aspects of the case and if the learned trial Judge would have considered the acknowledgment receipt in proper perspective and would have considered the circumstances and the admissions given by the respondent's wife and so called C.A. on record, he also would have come to the same conclusions as we have drawn. In these circumstances, we feel that there are no good reasons to set aside the ex parte decree and order and the learned trial Judge materially erred in all respects in concluding the maintainability of the application as well as in concluding the service of the suit summons on the respondent as not proper service."

I am surprised that the Revisional Court has overlooked vital principles in regard to service of notice. Having devoted so much time on the insignificant point such as power of attorney, the Court should have gone to the substance of the matter in such case. The Revisional Court, allowed the revision and set aside the judgment of trial Court, by its judgment dated 27th March, 1984. It is against this judgment that the present writ petition has been filed by the original defendant.

9. The learned Advocate for the defendant argued before me that u/s 29 of the Rent Act, the Revisional Court had no jurisdiction to discuss afresh the whole evidence in regard to notice. The Appellate Bench of the Small Cause Court sitting in revision, acted as if it was Appellate Court, for getting its limited jurisdiction under revision and virtually deciding the appeal against the order of the trial Court. In this particular case at least, this argument is well founded. The manner in which the Small Cause Court has written in this judgment clearly shows that though they were exercising revisional jurisdiction, the Court acted as

if it was Appellate Court as in the revisional jurisdiction, it could not have reconsidered the whole issue on facts again. The trial Court had itself clearly found that there was sufficient cause for setting aside the decree. Decree was an ex parte decree. Admittedly, present service on the defendant was a substituted service as the defendants could not be served, in an ordinary proper way. It is undisputed that no oral evidence was led by the parties and the case was tried only on the affidavits. The trial Court itself had addressed on the question of maintainability of the application. At the outset, I must point out that this is the only ground on which judgment of the Revisional Court should be set aside to correct the material error which the Court has committed in exercising its revisional jurisdiction. The learned Advocate for the defendant invited my attention to a judgment of the Supreme Court. It is an unreported judgment. The (Unreported Judgment (S.C.) 1985 P. 61), in the case of M/s Bhojraj Kunwarji v. Yograj sinha & others, wherein the Supreme Court had occasion to set aside the judgment of the High Court and the Assistant Judge. The Supreme Court observed as follows :---

"We find it difficult to appreciate the approach of the learned Assistant Judge while exercising revisional jurisdiction in interfering with an eminently just order. And the High Court disposed of the matter observing that the grounds for seeking condonation of delay were obviously no grounds at all. Again this approach left us unconvinced."

The Court further observed :

"Therefore, we are of the opinion that the learned Assistant Judge and the High Court were not justified in interfering with the order of the trial Court, in exercise of the revisional jurisdiction on the only ground that a different view on facts elicited was possible. This approach hardly permits interference in exercise of revisional jurisdiction."

Having regard to the provisions of the Bombay Rent Act, only application for condonation of delay was under consideration of the Supreme Court in this case and which was granted by the trial Court. It was held that the Assistant Judge and the High Court had no authority to interfere with the finding of the fact in their revisional jurisdiction. Relying on this judgment, it was contended by the learned Advocate for the petitioners that though the Appellate Bench was exercising revisional jurisdiction, it interfered with the finding of fact recorded by the trial Court and the Appellate Bench was not justified in interfering with the finding of fact and hence the judgment of the Appellate Court is vitiated by his basic error.

10. The learned Advocate for the defendant pointed out that the judgment in the suit at the time when ex parte decree was passed does not show that attention of the learned trial Judge was specifically invited to the fact of inadequate service of the notice. In order of the Court dated 2nd November, 1982 from the record it is seen that defendant has been served and writ of summons has been sent by

Registered A.D. as also by pasting. On what date it was done and when the matter proceeded again, it is not mentioned. It was contended by the learned Advocate for the defendant that this cryptic observation of the Court does not show that the Court was appraised of the kind of service which was effected in this suit. The defendant had already been absent. In case where ex parte decree is being passed, the Court passing ex parte decree is bound to satisfy itself about the adequacy of the service and express its view. From the observation of the Court and its findings, it does not appear that the plaintiff took sufficient care to impress upon the Court about the adequacy of the service in this case.

11. It was then contended by the learned Advocate for the defendant that the above service which was effected in this case was quite inadequate and insufficient. The plaintiff had made two attempts to serve the defendant on the earlier occasions, first attempt was made on 20th July, 1981. At that time, the plaintiff had accompanied the Bailiff of the Court. Again second time on 22nd July, 1981, the plaintiff went to serve the defendant along with the Bailiff at 6.30 p.m., but the defendant was not found. Report of the Bailiff says that he was informed by a lady inmate who was in the shop that the defendant had gone out. Then, finally the plaintiff seems to have obtained the orders from the Court to serve the defendant by substituted service. She applied to the Court on 28th July, 1981 stating that defendant had evaded service of writ of summons and there is no other mode except substituted service by pasting. It is also stated that she did not get any other address of the defendant except the address of the suit premises for service. That application was granted by the Court on the same day. In pursuance of the said order, the plaintiff again made attempt on 31st July, 1981, when Bailiff was accompanied by the plaintiff. He went to the same shop premises and he found the shop locked. So copy of the summons along with the plaint was affixed on the defendant's shop and defendant's shop was pointed out by the plaintiff herself. This substituted service was effected on 31st July, 1981.

12. There are three reports of the Bailiff which are formally solemnly affirmed stating that what is stated in the report is correct. On the strength of this substituted service, it was contended by the learned advocate for the defendant that grounds for substituted service were not properly made out at all. Admittedly, the defendant was not served properly and personally as he was out of India. No affidavit of the Bailiff was taken on record showing in what circumstances he was unable to find out the whereabouts of the defendant. There is no affidavit also to show how many times he made enquiries and efforts to find out the defendant. On his own saying on 22nd July, 1981, when he went to serve the summons he found one lady in the suit premises, but this fact seems to have not been mentioned anywhere in the application which was filed to obtain orders from the Court for substituted service on the defendant. It is also not explained why proper enquiries were not made by the Bailiff which would have lent some assurance of the real efforts made by the Bailiff and the plaintiff in this regard. Interval from 20th July, to 31st July, 1981 is not more

than 10 days. The two attempts which were shown to have been made on 20th July and 22nd July, 1981 are also deceptive to create any confidence in the matter of service on the defendant. The learned Advocate for the defendant therefore, contended that this procedure adopted for service on the defendant which was not proper and service on the defendant which is held to be sufficient on the basis of mere pasting is quite inadequate in this case. It is obligatory on the part of the serving officer to use all due and reasonable diligence to find out the defendant, and if there is no such inquiry and if there is no evidence of any such real efforts with due diligence, the service effected in such matter cannot be said to be proper service under Order 5, Rule 17 of the Civil Procedure. This is a case where the defendant could not be found. Rule 17 itself requires that there is no likelihood of the defendant being found within a reasonable time and there is no agent or any other person to whom service could be made. The Bailiff who had to execute the process should bear in mind that he has to make sufficient efforts. Mere visiting premises and that too at 6.30 p.m. is not at all sufficient. Validity of the service by pasting will depend, therefore, on the proof that the plaintiff has made genuine efforts to make service to show that the defendant could not be found. It is, therefore, necessary that provisions of Order 5, Rule 17 and Rule 19 should be strictly complied within the matter of service under Rule 17. In that case, affidavit of the serving officer should have been insisted on by the Court. In fact, any further inquiry should have been possible in such case, especially when the service was being made in a substituted manner. Order 5, Rule 19 requires that if summons is returned under Rule 17, the Court must examine the serving officer on oath. This has not been done in this case. Affidavit which is on record, by way of solemn affirmation is not sufficient in this case. It was contested by the other side that plaintiff was always present with the Bailiff at the time of service of summons on the defendant on 20th July, 22nd July and 31st July, 1981, and at the instance of the plaintiff only reports have been taken on summons and one does not know in what circumstances enquiry was ever made.

13. The learned Advocate for the plaintiff argued with sufficient restraint and inviting my attention to the provisions of Order 5, Rule 17 and Rule 19 of the Code, that there are two facts which are admitted by the defendant. From the affidavit-in-reply dated 7th June, 1983 filed by the wife of defendant, it has been stated as under :---

"I say and confirm that the plaintiff has filed this suit with ulterior motive and has obtained the signature of one of my employer. I deny that neither I nor defendant has received a notice of demand or any summons."

Relying on this statement of the wife of the defendant, it was contended by the learned Advocate for the plaintiff that this admission is sufficient to hold that service in this case is made on the defendant himself. I am afraid that this contention is misconceived. It is not shown that employee of the defendant was an authorised agent to accept service. In the absence of such authority the

employee cannot be said to be the person to be authorised to receive any summons. So this contention cannot be accepted. Then it was contended that there is service on the defendant by registered post for which acknowledgment is used. About this signature there is some controversy. The acknowledgment receipt is dated 18-3-1982. The signature on this acknowledgment appears to be in Urdu. The signature does not show that it is of Abdul Khan-defendant as such. The Urdu signature perhaps reads as "Mehboob". In these circumstances it is difficult to attribute signature to the defendant in token of having received the summons, or any of his agent to hold that this service is quite good service on the person of the defendant by Registered Post A.D. If registered notice is not received by the defendant and acknowledgment is not signed by him, in such case, no presumption can be drawn that the service is sufficient. This aspect has been dealt with by the learned trial Judge, and he held that this service was not proper and sufficient. He also observed that writ of summons in the above suit was not received by the defendant as alleged by the plaintiff at the time of ex parte decree. Reliance on the registered packet seems to have been considered by the courts below. Signature on the acknowledgment does not seem to be that of the defendant as such as he is out of India. It cannot be said that it was received by the defendant or his authorised agent. Therefore, conclusion reached by the learned trial Judge was quite correct. The contention of the learned Advocate for the plaintiff that this service on the defendant is quite sufficient is not well founded and is rejected.

14. From the above facts relating to service of summons in this case, it may be observed that the Court while passing ex parte decree must satisfy about adequacy of the service. The courts should also bear in mind the provisions of Order 5, Rule 17 and Rule 19 in the matter of examination whether particular service is valid or not in a given case. In this particular case, I am not satisfied that the service which is effected by following provisions of Order 5, Rule 17 is quite adequate and sufficient, to hold that the defendant was actually served. In my judgment, therefore, service on defendant is not proved by the plaintiff, both on law and facts. It is desirable for the Court to strictly follow the provisions of the Code in regard to service of summon on the parties.

15. The other contention which was raised by learned Advocate for the plaintiff was in regard to filing of proceeding by the wife of the defendant Constituted Attorney. I am dealing with a case which is governed by the Bombay Rent Act. The defendant is a tenant and he claims to be entitled to protection under the Rent Act. He is out of India. The wife is present and has made this application on the strength of the power of attorney. The said power of attorney is on record. A contention was raised by the learned advocate for the plaintiff that the said power of attorney does not authorise the wife of the defendant to file the proceedings. It was contended that this power of attorney restricted only to a particular case relating to business premises which was handed over by one Mehboob, nephew of the defendant to a third person. Wording of the power of attorney is as follows :---

"And whereas I have come down to Saudi Arabia for service as a tailor and I have left my business in the hands of my wife Smt. Zaitum Begum and my nephew Mr. Mehboob, is helping her in the said business and looking after the said business. And whereas I have learnt that Mr. Mehboob, has handed over the business premises to the third party, without my knowledge and consent and so of my wife and now I have lost possession of the same. And whereas I am unable to attend the said matter personally, as I am held up in Saudi Arabia and for the said purpose, I desire to appoint my wife Smt. Zaitum Begum as my lawful attorney.

And now I hereby nominate and appoint my wife Smt. Zaitum Begum residing at Block No. 19, Room No. 314, Collector Compound, Malvani Colony, Malad (West), Bombay-64, India, to be my lawful attorney for me and on my behalf to file the civil as well as the criminal cases or suits as against the third party to get the possession back or to settle. I give full authority to her to take legal actions by filing any case/suit and to engage any advocate. And I hereby agree to ratify and confirm all the lawful acts done by my said attorney by virtue of these presents".

This Powers of Attorney is given on 15th September, 1981 by the defendant to his wife. It was contended by the learned Advocate for the plaintiff that this is a Special Power of Attorney restricted only to take actions against the third person and Mehboob in respect of the shop premises and she was incompetent to file the present proceeding on the strength of this power of attorney. I am afraid that this contention is not well founded. The nomenclature given at the top of the document is "General Power of Attorney". It is true that mere nomenclature is not conclusive. The words which are used in the document are of wider connotation. Concluding part of the document shows that he has given full authority to his wife to take legal action by filing civil as well as criminal proceedings. It is true that the earlier part of the power of attorney shows that it is given for a specific purpose of taking action against the third party and said Mehboob. In my judgment it is not possible to conclude that the power of attorney is a special power of attorney, on the wording of the said document. The learned Advocate for the plaintiff invited my attention to certain judgments to show that the power of attorney should be construed in a particular way. He has referred to a judgment in the case of Adikappa v. Thomas Cook & Sons, reported in AIR 1933 P.C. 78 which lays down principles in regard to construction of such documents. It is laid down that the general words used in the power of attorney must be construed in the light of special clauses. In this particular case, we are concerned with special words in the earlier clause and general clause in the latter clause. It is true that earlier clause shows that this power of attorney is for a limited purpose to take action against third party. As stated earlier, the "expression third party" used in the power of attorney in this case can be understood to mean as of general character. In view of this, I think that this power of attorney is general power of attorney meaning thereby it was not restricted only to file proceedings against third party. Therefore, I reject the contention of the learned Advocate for the plaintiff and I hold that a present

power of attorney is quite sufficient to clothe wife in this case with authority to file proceedings against the plaintiff to defend the interest of the defendant.

16. Assuming that the power of attorney is otherwise not valid, when the wife has filed proceedings against the plaintiff for setting aside the ex parte decree which is passed by Court against defendant, to defend the interest of her husband, at least for this limited purpose, I do not think that the proceedings filed by the defendant's wife can be said to be invalid or his wife is incompetent to file proceedings. This would be a technical view of the matter especially when proceedings are for setting aside the ex parte decree which is part of the original proceedings. I am, therefore, satisfied that the application made by the wife of the defendant cannot be thrown out on the ground that the proceedings are not maintainable.

17. This is an exceptional case. The decree holder has obtained ex parte decree on 14th March, 1982. He executed the said ex parte decree on 14th March, 1983. He recovered possession of the suit premises on 16th March, 1983 and he demolished the shop premises on 17th March, 1983. It is said that when execution was sought after ex parte decree, no fresh notice was given and it is stated at the bar that ex parte decrees are executed without using any notice again in respect of the execution in pursuance of the said decree. I may observe that in order to avoid any such complications which are arisen in this case, it would be desirable, as far as possession is concerned, to issue notice to the concerned party in respect of the property which is the subject matter of the execution of the ex parte decree. Issuance of such notice may avoid further complications. So, it is desirable to issue such notice by the Executing Court before ordering actual execution.

18. In this case, after suit shop was demolished the plaintiff learned about the filing of the application by the defendant for setting aside the ex parte decree. Demolition of the suit shop in this case after executing the ex parte decree reflects about the bona fide of the plaintiff. It is not possible to say that the plaintiff was acted bona fide in demolishing the premises. The suit claim was not based on any ground relating to danger or ruinous condition of the building. In fact, under the Rent Act, it furnishes a good ground for recovering possession of the premises. No such averment is made in the plaint. There is no such record to show that there was danger which would have resulted in the severe damage to the life or property, if the structure would have continued in the same condition. In the absence of any such evidence, it is difficult to appreciate this act of the plaintiff, which is detrimental to the interest of the defendant. It may be mentioned that the decree holders who act in such rash and hasty manner invite themselves to penal action or even Contempt of Court in some cases and liable to pay the compensation for the loss caused because of any such rash and unnecessary action in a particular case. In this particular case, the Small Cause Court has ordered the plaintiff to reconstruct the premises. This order, admittedly, no doubt, introduces a new event. However, in the present case, this

order would be justified.

19. The learned Advocate for the defendant invited my attention to a judgment of the Supreme Court in the case of Binayak Swain Vs. Ramesh Chandra Panigrahi and Another, . The Supreme Court has emphasised principle of doctrine of restitution that it is desirable that the parties must be resorted the same position so far as they can be restored, before they were taken at the time when under orders of Court or erroneous action of the Court had displaced them. In this particular case at least, it appears to me that the plaintiff has demolished the shop premises without any ground whatsoever. Demolition, perhaps is with a design to counterblast the claim of the defendant for setting aside the decree, which is apparent from the reply which the plaintiff has given in answer to the claim which I have already quoted in page 3 paragraph 5 of this judgment. It will show that the plaintiff wanted to see that the proceedings for setting aside ex parte decree are rendered infructuous by that action. He has stated in his affidavit-in-reply that restoration of possession has become infructuous as, pursuant to the decree he has demolished the shop premises on 17th March, 1983. In my judgment, the order passed by the trial Court directing the plaintiff to reconstruct the premises in his original condition is quite just and proper. Disturbing feature of this case is that the plaintiff---decree holder has acted very hastily and with such rashness as would raise a doubt about his real bona fides in the matter. It is, therefore, proper and just that shop premise are reconstructed and brought to its original condition as they were before demolition.

20. I, therefore, set aside the judgment of the Revisional Court i.e. Appellate Bench of the Small Cause Court dated 27-3-1984 and restore the judgment of the trial Court dated 16-7-1983. As far as ex parte decree is concerned, I direct that the defendant should deposit rent of the premises upto date within one month from today. If the defendant has already paid rent, adjustment will be given to him. In any event, the defendant is directed to deposit the rent till date will continue to deposit the same after plaintiff reconstructs the said premises.

21. In the result, the rule is made absolute. The plaintiff is directed to reconstruct the shop within six months, in the same position as it was taken possession thereof on 16-3-1983 in execution of the ex parte decree. Nominal costs of Rs. 100/- to be paid to the petitioner-defendant by the plaintiff.