

(2009) 01 SC CK 0021

In the Supreme Court Of India

Case No : Civil Appeal No. 18 of 2009 (Arising out of S.L.P. (C) No. 2539 of 2007)

Munilakshamma and Another

APPELLANT

Vs

B.V. Sampath and Another

RESPONDENT

Date of Decision : 06-01-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2009) 01 SC CK 0021

Hon'ble Judges : G. S. Singhvi, J;B. N. Agrawal, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

1. Leave granted.
2. Heard learned Counsel for the parties.
3. The appellants filed a petition under Order IX Rule 13 of the Code of Civil Procedure, 1908, (for short, 'the Code') for setting aside the ex-parte decree passed in a suit for specific performance of contract. The said petition was rejected by the Trial Court and the same has been confirmed by the High Court. Hence, this appeal by special leave.
4. Having heard learned Counsel for the parties and perused the records, we are of the view that in the facts and circumstances of the present case, the Trial Court should have set aside the ex-parte decree and the High Court committed an error in confirming the order passed by the Trial Court.
5. Accordingly, the appeal is allowed, impugned orders are set aside and the petition under Order IX Rule 13 of the Code filed by the appellants is allowed and ex- parte decree passed in the suit is set aside.
6. As both the defendants are appellants before this Court, the Trial Court would not be required to issue fresh notice of the suit to them. They shall file written

statement within two months from today. Thereafter, the Court shall proceed to decide the suit in accordance with law.