
(2005) 05 BOM CK 0003

In the Bombay High Court

Case No : Civil Revision Application No. 693 of 2001

Pravinchandra Dhanjibhai Kotak

APPELLANT

Vs

Murli Agro Products Limited

RESPONDENT

Date of Decision : 03-05-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 29 Rule 2, Order 5 Rule 17, Order 9 Rule 13
Limitation Act, 1963 — Article 123

Citation : (2005) 4 ALLMR 19 : (2005) 5 BomCR 172 : (2005) 3 CivCC 614 :
(2005) 4 MhLj 156

Hon'ble Judges : Kharche S.T., J

Bench : Single Bench

Advocate : Rajiv Chhabra, for the Appellant; J.M. Gandhi, for the Respondent

Final Decision : Dismissed

Judgement

Kharche S.T., J.—This civil revision application is directed against the order dated 5-5-2001 passed by the learned 9th Joint Civil Judge, Jr.Dn., Nagpur, in Misc. Judicial Case No. 262 of 2000, where by the application of the original defendant for setting aside the ex parte decree dated 8-8-2000 in Regular Civil Suit No. 458 of 2000 was allowed subject to payment of costs of Rs. 3.000/- under Order IX, Rule 13 of the Code of Civil Procedure.

2. Mr. Chhabra, learned Counsel, for the applicant contended that the application filed by the defendant for setting aside the ex parte decree has been brought beyond the period of limitation, as the decree was passed on 8-8-2000 whereas the application was filed on 4-12-2000. He contended that the application should not have been registered. In support of these submission, he relied on the decision of this Court in Vijay Prabhakar Salunke Vs. Kamini S. Dadarkar, . He contended that the suit summons was served on Ravikumar, who is an employee of the defendant, and the service was valid in view of the provisions Sub-clause (b) of Rule 2 of Order XXIX of the CPC which contemplates that where a suit is against the Corporation, the summons may be served by leaving it or sending it

by post addressed to the Corporation at the registered office, or if there is no registered office at the place where the Corporation carried on the business. He contended that the defendant did not plead in. In their application for condonation of delay that Ravikumar is not authorised to receive the summons and, in such circumstances, the service will have to be valid one. He contended that the defendant had chosen to remain absent in spite of service of summons and, therefore, the ex parte decree was passed in favour of the respondent and there was no reason for setting aside the ex parte decree. He contended that the learned trial Court has committed an error in setting aside the exparte decree and, therefore, the impugned order cannot be sustained in law.

3. Mr. Gandhi, learned Counsel for the respondent, contended that the application for condonation of delay was not barred by the period of limitation because it was filed on the date of knowledge of the decree. He supports the impugned order passed by the learned 9th Joint Civil Judge, Jr. Dn. and contended that the service on the defendant which is a Corporation was not valid as it was accepted by one Ravikumar a clerk who did not inform the Director or the Managing Director regarding the receipt of the summons. He contended that mere handing over of the summons to an employee of the Corporation who was not authorised to receive the summons would not make the service valid within the meaning of the provisions of Order XXIX, Rule 2(b) of the CPC and, therefore, no inference into the impugned order is warranted. In support of these submission he relied on the decision of the Apex Court in *Shalimar Rope Works Ltd. v. Abdul Hussain H.M.Hasan Bhai Rassiwalla*, AIR 1080 S.C. 1163.

4. This Court has given thoughtful consideration to the contentions canvassed by the learned Counsel for the parties. It is not in dispute that Reg. Civil Suit No. 485/2000 has been decreed on 8-8-2000 and the application for setting aside the ex parte decree was filed on 4-12-2000. The decision of this Court in *Vijay Prabhakar*, cited supra, on which reliance is placed by the learned Counsel for the applicant/plaintiff has no bearing on the facts and circumstances of the present case because there is an averment in the application that the defendant has approached the Court after receiving knowledge of the decree. Article 123 of the Limitation Act prescribes the limitation period for setting aside the ex parte decree and contemplates that the time shall begin to run from the date of knowledge of decree, or when the applicant had the knowledge of the decree. Since the applicant/defendant had filed the application immediately after acquiring the knowledge of passing of the ex parte decree, it is not possible to accept the contention of the learned Counsel for the applicant that the application for setting aside the ex parte decree was barred by the period of limitation.

5. Now coming to the merits of the case, it is not disputed that the summons was served on one Ravikumar, who was admittedly an employee of the company-respondent. It is also true that the defendant did not make any averment in their pleading that Ravikumar was not authorised to receive the summons, but it is

obvious that the service was not valid in accordance with the provisions of law.

6. The Apex Court in the case of M/s. Shalimar, cited supra, held that the meaning of Clause (b) of Order XXIX, Rule 2 of the CPC has to be understood with reference to Order V, Rule 17 of the CPC and mere handing over of summons to an employee not authorised to receive the summons, does not amount to valid service of summons on company.

7. The trial Court has considered the scope of various provisions and has recorded the finding that the service on the defendant through Ravikumar was not valid and there is no reason for this Court to take a different view of the matter. Consequently, this civil revision application stands dismissed.