



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.15581 OF 2023

EEPC (INDIA)
(Formerly Engineering Export
Promotion Council) through its
Regional Chairman

....*Petitioner*

V/s.

- 1) Nirajkumar Dubey
- 2) Nilima Mishra
- 3) Nilabhkumr Dubey

....*Respondents*

Mr. Pradeep throat with *Mr. Malcolm Siganporia & Mr.Samarth Chowdhary*
i/b. IndusLaw, for the Petitioner.

Mr. A.P. Wachasundar *for the Respondents.*

CORAM : SANDEEP V. MARNE, J.

Dated : 27 June 2024.

JUDGMENT :

1) Petitioner has filed this petition challenging the order dated 9 December 2021 on application filed by Defendant No.1(a) and 1(b) at Exhibit 86 seeking dismissal of the Suit for non-compliance of Rule 11 of Order V of the Code of Civil Procedure, 1908 (the **Code**). The Trial Court has allowed the application on 9 December 2021 and the Suit against Defendant No.1(c) has been dismissed under provisions of Order IX Rule 5 of the Code. Petitioner applied for review of the order by filing application at Exhibit-96,

which has been rejected by order dated 15 March 2023, which is also subject matter of challenge in the present petition.

2) Petitioner /Plaintiff has filed R.A.D. Suit No.600 of 2005 against original Defendant -Savitri Dubey seeking a declaration of tenancy /deemed tenancy in respect of suit premises bearing flat No.5 in the building 'Shivsagar' Block No.19, Worli Sea Face, Worli, Mumbai-400 018. During the pendency of the Suit, Savitri Dubey passed away on 29 June 2016. Her Advocate filed *pursis* dated 8 July 2016 informing about death of Defendant-Savitri Dubey leaving behind two sons and a daughter. It was contended in the *pursis* that after the death of the Defendant, Suit would be defended by her eldest son -Nirajkumar Chandulal Dubey and that the other son and daughter had consented for defending of Suit by him. Consent letter dated 4 July 2016 of Nilima Mishra and Nilabhkumar Dubey was produced alongwith the *pursis*. The Small Causes Court passed order dated 15 November 2016 directing that all the legal heirs of the deceased Defendant be brought on record. Accordingly, plaint was amended and Nirajkumar Dubey, Nilima Mishra (Dubey) and Nilabhkumar Dubey came to be impleaded as Defendant No.1(a) to Defendant 1(c). It appears that an application was filed by Defendant No.1(a) seeking dismissal of suit against Defendant No.1(b) and 1(c) (erroneously described as Defendant Nos.2 and 3) under the provisions of Order IX Rule 5 of the Code. It was contended in the application that the summons in the Suit were not served on Defendant Nos.1(b) and 1(c) and that therefore the Suit was liable to be dismissed against the said Defendants. By order dated 4 April 2018, the Small Causes Court rejected the application at Exhibit 49 holding that no order was issued for issuance of summons to Defendant No.1(b) and 1(c) and that therefore

there was no question of Plaintiff taking steps after return of summons without service. It appears that a separate order was passed on 4 April 2018 observing that due to oversight, suit summons were not issued to Defendant No.1(b) and 1(c). The Court therefore directed issuance of summons on Defendant No.1(b) and 1(c) on 14 April 2018. It appears that both the summons were returned unserved. In respect of Defendant No.1(b) the remark was “*he unclaimed the same*” whereas summons in respect of Defendant No.1(c) was returned with the remark ‘*door locked*’. However it appears that an appearance was caused by Defendant No. 1(b) in the suit.

3) Defendant No.1(a) and 1(b) filed application for rejection of plaint under Order VII Rule 11 sub clause (a) and (d) of the Code on 3 December 2018, which came to be rejected by the Small Causes Court by order dated 28 August 2019. Defendant No.1(a) and 1(b) filed Revision Application No.24 of 2021 challenging the order of dismissal of application for rejection of plaint, which came to be rejected by the Appellate Bench by order dated 11 February 2021.

4) Defendant Nos.1(a) and 1(b) thereafter filed application at Exh.86 seeking dismissal of the Suit under provisions of Order V Rule 11 of the Code on the ground that Defendant No.1(c) was not served with suit summons. By order dated 9 December 2021, the Small Causes Court allowed the application at Exh.86 and dismissed the Suit against Defendant No.1(c) under Order IX Rule 5 of the Code, which is the subject matter of challenge in the present Petition. Petitioner filed Revision Application No.73 of 2022 before the Appellate Bench challenging the order dated 9 December 2021, but withdrew the same on 21 June 2022 with liberty to file proceeding before

the appropriate forum. Petitioner thereafter filed application at Exhibit-96 seeking review of order dated 9 December 2021. By order dated 15 March 2023, the Small Causes Court has rejected the application for review, which order is also subject matter of challenge in the present petition.

5) Mr. Thorat, the learned counsel appearing for the Petitioner would submit that the Small Causes Court has erred in allowing the application filed by Defendant Nos.1(a) and 1(b) and in dismissing the Suit against Defendant No.1(c). He would submit that Defendant No.1(c) is the brother of Defendant No.1(a) and 1(b). That the address of Defendant No.1(c) is the same that of Defendant No.1(a). Inviting my attention to the *pursis* dated 8 July 2016 filed by the Advocate for the original Defendant, Mr. Throat would submit that in fact representation was made to the Small Causes Court that Defendant No.1(a) alone would represent Defendant No.1(b) and 1(c). That in such circumstances, non-service of summons on Defendant No.1(c) cannot be a reason for dismissal of suit against Defendant No.1(c).

6) Mr. Thorat would further submit that the application filed by Defendant Nos. 1(a) and 1(b) under provisions of Order V Rule 11 of the Code itself was not maintainable. That Order V Rule 11 of the Code merely mandates service of summons on each of the Defendants and does not provide for any consequences for non-service of summons on a particular defendant. He would further submit that earlier application under Order IX Rule 5 of the Code was filed by Defendant Nos. 1(a) and 1(b) on 1 August 2017 seeking dismissal of the entire Suit for non-service of summons on Defendant No.1(c). That the said application at Exhibit-52 was rejected by

the Small Causes Court by order dated 4 April 2018. That therefore Defendant No.1(a) and 1(b) could not have filed one more application seeking dismissal of Suit against Defendant No. 1(c) either under provision of Order IX Rule 5 and in any case, under provisions of Order V Rule 11 of the Code. Mr. Thorat would further submit that Defendant Nos.1(a) to 1(c) are represented by the same Advocate in various other proceedings, particularly the proceedings relating to the Competent Authority under Section 24 of the Maharashtra Rent Control Act, 1999. That therefore knowledge of pendency of proceedings on the part of Defendant No.1(c) ought to have been inferred by the Small Causes Court. Mr. Thorat would further submit that in any case, if separate service of suit summons on Defendant No.1(c) was considered necessary by the Small Causes Court, it ought to have issued fresh summons rather than dismissing the Suit by adopting hyper-technical approach. Relying on provision of Section 151 of the Code, Mr. Thorat would submit that the Small Causes Court is otherwise not bound by the period specified under provisions of Order IX Rule 5 and could have always issued a fresh summons to Defendant No.1(c). In this regard, he would rely upon judgment of the Full Bench of this Court in *Hariba Tatyaba More and Others vs. Dada Eknath More and Others*,¹ in which it is held that Section 151 of the Code can be invoked by showing sufficient cause seeking restoration of Suit dismissed under Rule 5 of Order IX of the Code. He would submit that similar view is taken by this Court in *Ursula Renha Rumaldina Soares and Others vs. Fatima Conceicao Tony Colacoe Fernandes and Others*,² and *Sanjay Madanchand Kashyap Vs. Moolchand Saheblal Kashyap*³ Mr. Thorat would therefore submit that this

1. (2019) 6 Mah LJ 511

2. (2012) 6 AIR Bom R 773

3. (2015) 1 Mah LJ 142.

Court may direct the Court of Small Causes to issue fresh summons to Defendant No.1(c) by restoring the Suit against Defendant No.1(c).

7) *Per contra*, Mr. Wachasundar, the learned counsel appearing for Respondent Nos.1 and 2 would oppose the petition and support the orders passed by the Small Causes Court. He would submit that it is mandatory for Plaintiff to serve Suit summons on each of the Defendants under Order V Rule 11 of the Code. That admittedly, Suit summons has not been served on Defendant No.1(c) and therefore no fault can be found in the order passed by the Small Causes Court in dismissing the Suit against Defendant No.1(c) for admitted failure on Plaintiff's part to apply for issuance of fresh summons within two months. That the provisions of Order IX Rule 5 of the Code are mandatory in nature and failure to take necessary steps within the prescribed time results in dismissal of the Suit against unserved Defendant. Mr. Wachasundar would invite my attention to sub-Rule (2) of Rule 5 of Order IX under which, Plaintiff can always bring fresh suit against the unserved Defendant.

8) So far as the filing of *pursis* dated 8 July 2016 is concerned, Mr. Wachasundar would submit that though the said *pursis* was attempted to be filed authorising Defendant No.1(a) to represent 1(b) and 1(c), the Small Causes Court rejected the said *pursis* and insisted that Defendant Nos.1(b) and 1(c) are also be brought on record. That therefore mere filing of *pursis* dated 8 July 2016 by the Advocate of the deceased Defendant did not absolve Plaintiff of requirement under Order V Rule 11 to serve each of the impleaded Defendants.

9) Mr. Wachasundar would further submit that the Full Bench of this Court in ***Hariba Tatyaba More*** (supra) has put a caveat on exercise of power under Section 151 of the Code in restoration of the Suit dismissed under Order IX Rule 5 of the Code by observing that the Plaintiff must show sufficient cause. Inviting my attention to ground clause J of the petition, he would submit that Petitioner has admitted commission of procedural lapses. That no sufficient cause is shown for delay of over three years in not taking any steps for service of Suit summons on Defendant No.1(c). That even till date, no application is filed by Plaintiff for service of summons on Defendant No.1(c). That therefore, the impugned orders passed by the Small Causes Court do not warrant any interference so long as it is established that there is no improper exercise of jurisdiction by it. He would therefore submit that this Court need not entertain the present Petition and exercise the jurisdiction of *Certiorari* since the impugned orders are passed by the Small Causes Court by proper exercise of jurisdiction vested in it. He would pray for dismissal of the Petition.

10) Rival contentions of the parties now fall for my consideration.

11) The Suit has been dismissed by the Small Causes Court against Defendant No.1(c) for the reason of non-service of Suit summons on him and for the reasons of Plaintiff failing to apply for issuance of fresh summons within the time mandatory under Order IX, Rule 5 of the Code.

12) As observed above, after death of the original Defendant her children are brought on record as Defendant No.1(a) to 1(c) by order dated 15

November 2016. Though 'no objection' of Defendant No.1(b) and 1(c) was produced for defending the Suit through Defendant No.1(a) vide *pursis* dated 8 July 2016, the Small Causes Court thought it appropriate that all the three children of the deceased Defendant should be brought on record. After passing of order dated 15 November 2016, it appears that Defendant No.1(a) appeared in the Suit through Advocate on 1 August 2017 and application was moved on his behalf seeking dismissal of the Suit against Defendant No.1(b) and 1(c) (erroneously described as Defendant Nos.2 and 3) on the ground of non-service of summons on them. Upon filing of the said application on 1 August 2017 at Exhibit-49, the Small Causes Court apparently realised that summonses were never issued to Defendant Nos.1(b) and 1(c). Therefore, while rejecting the application at Exhibit-49 on 4 April 2018 the Court issued summons to Defendant Nos.1(b) and 1(c). Though the summons of Defendant No.1(b) was also returned unserved on account of she not claiming the same, she apparently appeared before the Court on 12 July 2018 and thereafter continued to remain represented through the same Advocate appearing for Defendant No.1(a). The summons issued by Defendant No.1(c) was returned with the remark 'door locked'.

13) After unsuccessfully trying rejection of the plaint under Order VII Rule 11 of the Code, Defendant Nos.1(a) and 1(b) came out with the idea of seeking dismissal of the Suit against Defendant No.1(c) by referring to the provision of Order V Rule 11 of the Code. Their application has been considered by the Small Causes Court under the provisions of Order IX Rule 5 of the Code and the suit against 1(c) has been dismissed for non-service of summons on him by order dated 9 December 2021.

14) Order V Rule 11 of the Code requires service of summon on each of the Defendants where there are more Defendants than one. Rule 11 of Order V reads thus:-

Order V Rule 11.

Service on Several defendants.- Save as otherwise prescribed, where there are more defendants than one, service of the summons shall be made on each defendant.

15) Order IX Rule 5 provides for dismissal of Suit where Plaintiff fails to apply for fresh summons after the summons is returned unserved. Order IX Rule 5 sub-Rule 1, as amended by Bombay amendment, reads thus:-

5(1) Dismissal of suit where plaintiff after summons returned unserved fails for two months to apply for fresh summons.-

Where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of two months from the next hearing of the suit to apply for issue of a fresh summons the Court, shall make an order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the Court that-

16) Thus, under Order IX Rule 5, it is incumbent for Plaintiff to apply for issuance of fresh summons in case the summons issued to one of the several Defendants is returned unserved and such application is required to be filed within a period of two months from the next date of hearing of the Suit. In the present case, it appears that the summons issued to Defendant No.1(c) on 4 April 2018 was returned unserved as per the bailiff's report. Admittedly, within the specified period of two months under Order IX Rule 5 of the Code, Plaintiff did not apply for issuance of fresh summons to Defendant No.1(c).

17) The issue is whether the period of two months specified in Order IX Rule 5 is required to be so strictly construed so as to mean that failure to apply for fresh summons within two months must mandatorily result in dismissal of the suit *qua* unserved Defendant? Coupled with the said question, another question is as to whether a suit which is dismissed *qua* unserved Defendant under Order IX Rule 5 of the Code can be restored by the Court and whether filing of fresh suit against unserved Defendant under sub-Rule (2) of Rule 5 of Order IX is the only option available to Plaintiff? These questions have been answered by Full Bench of this Court in ***Hariba Tatyaba More*** (supra). It appears that in ***Vishwanath Satwaji Gaikwad v. Laxman Abaji Kavale, 2000 (4) Mh.L.J. 498***, a Single Judge of this Court has taken a view that the legislature was conscious of various circumstances or events resulting in dismissal of a Suit and has consciously not vested the Court with power of restoration if the suit is dismissed under Rule 5 of Order IX of the Code. The Full Bench of this Court did not agree with the view of the Single Judge in ***Vishwanath Satwaji Gaikwad*** (supra) and has held in paragraphs 7, 8, 11, 12 and 14 as under:-

“7.The argument of learned Counsel for the proponent of the view as taken by the learned Trial Judge and a learned Single Judge of this Court prima facie is attractive and apparently logical and also appears to be without blemish. However, it has to be kept in mind that laws of procedure are intended to subserve the cause of substantive justice. The cause of substantive justice is that disputes brought before a Court of law are adjudicated on merits and not sacrifice on the anvil of procedural laws.

8. If the legislature had not provided under Rule 4 that notwithstanding dismissal of a Suit either under Suit in der Rule 3 a fresh Suit could be instituted, since dismissal of a Suit in default would not operate as res judicata a fresh Suit could always be filed subject to the law of limitation. Similarly, a Suit dismissed under sub-rule (1) of Rule 5 would not have precluded the plaintiff from instituting a fresh Suit subject to the law of limitation. Thus, it

is apparent that the declaratory right provided for under Rule 4 and Rule 5 of Order IX of the Code is by way of abundant precaution and not by way of conferring upon the plaintiff a right to file a fresh Suit on the same cause of action on which the Suit which was earlier dismissed was rested.

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11. The Supreme Court held that there is no express prohibition contained in the Code that save and except situation contemplated by section 94 read with Order XXXIX, Rule 1 and Rule 2 of the Code, injunctions could not be issued. The Supreme Court highlighted that so wide were the situations which may arise before a Civil Court that it was impossible for the legislature to conceive of all and provide for a consequence thereof. Thus, the Supreme Court held that an anti suit injunction could be justified by pressing the power of the Court to Section 151 of the Code of Civil Procedure. The decision would be a law on the point that unless there is a prohibition on the power of a Civil Court, power under Section 151 of the Code could be exercised in the interest of justice.

12. Pertaining to restoration of a Suit dismissing in exercise of power under Sub-Rule (1) of Rule 5 of Order IX of the Code, a distinct additional reasoning would justify the recognition of inherent power in the Court to restore such Suit. It is settled law that negligence by an agent is treated at a lower level of culpability vis-a-vis negligence by the principal. We have a catena of judgments where on account of defaults of lawyers such as re-filing of plaints which are returned with objections by the Registry, the Courts have been extremely liberal in condoning the delay on the reasoning that once the litigants engage a lawyer and executes the Vakalatnama, the lawyer, as the agent of the client has to take reasonable steps to prosecute the Suit. Ground realities cannot be ignored. Procedural steps required in the onward movement of a Suit are left at the hands of the lawyer by the clients. The lawyers in turn take the help of their court clerks. The court clerks have to visit the registries to find out whether summons sent have been returned served or unserved. If unserved, the court clerk has to inform the counsel that steps need to be taken to file an application and request the court to issue fresh summons. This also would justify a view to be taken that inherent powers of the Court would always exist if procedural compliances are not made resulting in a penal order being passed. Cry for justice has to be responded to by a court of justice and equity and unless there is a power, there can be no response to help.

14. Overruling the view taken by the learned Single Judge of this Court and answering the reference by declaring that Section 151 of the Code could be invoked to seek restoration of a Suit dismissed under Sub-Rule (1) of Rule 5 of Order IX of the Code, we lodge the caveat. The caveat would be that the Plaintiff would have to show a sufficient cause. The previous conduct of the Plaintiff would also require to be considered. The inconvenience and the prej-

udice caused to the served defendants or the defendant who was not served as a consequence of restoration of the Suit would also have to be kept in mind.
(emphasis supplied)

18) Thus, the Full Bench of this Court in ***Hariba Tatyaba More*** (supra) has held that provisions of Section 151 of the Code can be invoked to seek restoration of the Suit dismissed under sub rule 1 of rule 5 of Order IX of the Code. This Court has however, prescribed a caveat that Plaintiff must show sufficient cause for exercise of such power and previous conduct of the Plaintiff is required to be considered.

19) In ***Sanjay Madanchand Kashyap*** (supra), the learned Single Judge of this Court has dealt with a case where the application filed seeking dismissal of Suit under Order IX Rule 5 of the Code was rejected despite failure to apply for issuance of fresh summons within prescribed time and summons was directed to be issued to unserved Defendants. It was contended before this Court that the Court was bound to make an order of dismissal of Suit against unserved Defendant if application for issuance of fresh summons is not filed within the prescribed time limit. It was contended that the provision is mandatory and left no discretion with the Court. The Single Judge of this Court however did not agree with the said contentions and has held in paragraphs 10 and 11 as under:-

10. Thus, it has to be borne in mind that laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property and should not continue in their absence and that they should not be precluded from participating in them. Of they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever that it reasonably possible, in the light of that principle. The Supreme Court

specifically observed in para 15 of the ruling that in cases where close relatives are litigants, liberal approach is called for.

11. Procedural fairness also require that fair opportunity must be given to answer the case and to raise an objection about procedural provision and also to give notice to the opposite parties to avail of opportunity of being heard. Therefore, considering the principles of natural justice that nobody shall be condemned unheard, legitimate expectation of a litigant that suit would be decided after hearing the parties in accordance with law must be respected while passing the orders. That being so, the observations made in respect of mandatorily worded provision of order VIII, Rule 1 of the Code of Civil Procedure are attracted in cases of identical mandatorily worded procedural provision of Code of Civil Procedure. In view of the observations made by Hon'ble Supreme Court as above the law laid down in the case of Sangram Singh would no longer would be a good law, particularly, when litigation is between close relatives seeking partition and separate possession of the joint family or ancestral property. Larger interest of justice would be served if such litigation is taken to its logical end and decided on all fronts. That being so, the impugned orders in respect of applications made for permission to serve the unserved defendants made on behalf of the plaintiffs and an application made by defendant No.1 to have the suit dismissed on the ground that some of the defendants were unserved and should be dismissed against them were passed in conformity with law as laid down by the Apex Court in the case of Sambhaji the instant case needs no interference in exercise of extra-ordinary writ jurisdiction. Hence, the writ petition must be dismissed. It is accordingly dismissed.

20) After considering the ratio of the judgment of the Full Bench in *Hariba Tatyaba More* (supra) and *Sanjay Madanchand Kashyap* (supra) I am of the view that the Court is vested with necessary jurisdiction to issue fresh summons to unserved Defendants even beyond the period prescribed under Order IX Rule 5 of the Code if sufficient cause is made out by the Plaintiff for not filing application for issuance of fresh summons within such time. Furthermore, in the event the Suit is dismissed against unserved Defendants under Order IX Rule 5 sub Rule (1), the Court can invoke powers under Section 151 of the Code to restore such suit if sufficient cause is made out by Plaintiff.

21) Applying the above enunciation of law to the facts of the present case, in my view, this is a fit case where Small Causes Court ought to have issued fresh summons to Defendant No.1(c) rather than dismissing the Suit under Sub rule (1) of Rule 5 of Order IX. In fact, there is sufficient reason to believe that Defendant No.1(c) had knowledge of pendency of proceedings and such knowledge on the part of Defendant No.1(c) can easily be inferred from *pursis* dated 8 July 2016 and particularly from contents of 'Consent and Authorisation' executed by Defendant No.1(c) on 4 July 2016. The said 'Consent and Authorisation' is a notarised document executed on stamp paper, which refers to pendency of R.A.D. Suit No.600 of 2005 in the Court of Small Causes at Mumbai. Thus, Defendant No.1(c) is fully aware about pendency of the Suit. He sought to authorise his brother Defendant No.1(a) to represent him in the Suit by execution of the said 'Consent and Authorisation'. If the Small Causes Court was to accept the *pursis* dated 8 July 2016 and was to implead only Defendant No.1(a) as legal representative of the deceased Defendant, occasion for service of suit summons on Defendant no.1(c) would not have been arisen. However, the Small Causes Court thought it prudent to implead all the three children of deceased Defendant. It is an admitted position that Defendant No.1(a) and 1(c) reside at the same address i.e. 'A-1/4, S. No.47/4 B, Seoul "C" CHS, Gandhi Bhavan Road, Kothrud, Pune-411 029'. This is yet another reason to infer knowledge about pendency of Suit on the part of Defendant No.1(c). In the facts and circumstances of the present case therefore, it becomes questionable as to whether Defendant No.1(c) is required to be separately served with suit summons or not. Even if the provisions of Order V Rule 11

of the Code are to be strictly construed and despite acquisition of knowledge of pendency of Suit by Defendant No.1(c), it was still necessary to serve separately with suit summons, in my view the Small Causes Court ought to have issued a fresh summons to Defendant No.1(c) rather than passing the impugned order dated 9 December 2021.

22) Mr. Wachasundar has sought to contend that Plaintiff has not made out sufficient cause for being negligent in not supplying for fresh summons to Defendant No.1(c). I am unable to agree. The Small Causes Court was specifically made aware, while passing order dated 9 December 2021, about filing of *pursis* dated 8 July 2016. The Small Causes Court therefore ought to have considered the knowledge on the part of Defendant No.1(c) about pendency of the Suit rather than adopting hyper-technical approach in dismissing the suit against Defendant No.1(c), which has led to this unnecessary litigation.

23) The purpose of service of suit summons is essentially to give notice of filing of proceedings to the Defendant in the Suit. Once it is noticed that the concerned Defendant has acquired knowledge of filing of Suit or proceedings, Court should avoid hyper-technical approach in ensuring that Suit summons must be proved to be properly served on that Defendant and particularly should not dismiss the Suit by resorting to provisions of Order IX Rule 5 of the Code. Rather while exercising power under Order IX Rule 5 of the Code, the Court should apply its mind to the facts of the case and consider whether Plaintiff is absolutely negligent in making efforts for service on Defendants. In the present case, the Small Causes Court ought to have

noticed Defendant Nos.1(a) and 1(c) are residing at the same address and that Defendant No.1(c) had expressed desire to be represented by Defendant No.1(a). If the Small Causes Court was to bear in mind this vital aspect, there would have been no necessity of dismissing the Suit and the Small Causes Court could have always issued fresh summons as observed by the Single Judge of this Court in *Sanjay Madanchand Kashyap* (supra).

24) After considering the overall conspectus of the case, I am of the view that order dated 9 December 2021 allowing the application at Exhibit-86 as well as the order dated 15 March 2023 rejecting the application for review was unsustainable and are liable to be set aside.

25) Writ Petition is accordingly succeeds and I proceed to pass following order:-

(i) Order dated 9 December 2021 passed on application at Exhibit-86 as well as order dated 15 March 2023 passed on application at Exhibit-96 are set aside. Application filed by Defendant No.1(a) and 1(b) at Exhibit-86 is rejected.

(ii) The R.A.D. Suit No.600 of 2005 stands restored on the file of Small Causes Court, Mumbai against Defendant No.1(c).

(iii) The Plaintiff shall apply for issuance of fresh summons to Defendant No.1(c) by making an application in that regard within a period of four weeks. Upon such application being made, the Small Causes Court shall proceed to issue fresh summons to Defendant No.1(c).

26) With the above directions, the writ petition is allowed. Rule is made absolute. There shall be no order as to costs.

[SANDEEP V. MARNE, J.]