

**(1922) 02 BOM CK 0025**

**Bombay High Court**

**Case No:** None

Radhabai Rom Bhaskar  
Sakharam

APPELLANT

Vs

Anant Pandurang Pandit and  
Another

RESPONDENT

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**Date of Decision:** Feb. 7, 1922

**Citation:** 70 Ind. Cas. 762

**Hon'ble Judges:** Norman Macleod, C.J; Coyajee, J

**Bench:** Division Bench

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### **Judgement**

1. We do not underhand the procedure followed in this suit. It appears that there was some uncertainty whether the 4th defendant was served with the summons or not. The Judge made an order that the case should proceed against her ex parte when the 4th defendant actually appeared in Court and asked for this order to be cancelled. Notice was issued to the plaintiff and the applicant was then examined and she explained how it came to pass that she was not aware of the suit having been filed against her. But the Judge did not believe what was said and dismissed her application, directing that the case should go against her ex parte. We do not know under what provisions of the Code the that made this order pending the hearing of the suit. Until a suit is actually called on, a party is entitled to appear and defend. It may be that he is guilty of delay and if that is the case he may be mulcted in costs. But if he does not appear before the suit is heard, then he has no right to be heard. Rule absolute. Costs, costs in the cause.