

(2007) 04 BOM CK 0178

Bombay High Court

Case No: Notice Of Motion No. 332 of 2007 in Suit No. 2108 of 1999

Bank of Baroda

APPELLANT

Vs

Deepak Raghuvir Wagle
Proprietor of Jyoti Electronics
and Mrs. Jyoti Deepak Wagle

RESPONDENT

Date of Decision: April 3, 2007

Citation: (2007) 3 BomCR 42 : (2007) 4 MhLj 829

Hon'ble Judges: A.M. Khanwilkar, J

Bench: Single Bench

Advocate: S.M. Sidhwa, for the Appellant;

Judgement

A.M. Khanwilkar, J.

Opposite party has been duly served. However, none appears for the defendants when the matter is called out.

2. By this motion, plaintiff prays that the order passed by the Prothonotary and Senior Master on 11th December 2006, dismissing the suit for default be set aside and the suit be restored to the file. The impugned order passed by the Prothonotary and Senior Master reads thus:

The plaintiffs and their Advocates are absent. They were absent on the earlier occasions also. It is not known whether the Defendants have been served or not. Suit dismissed for default.

2. The question is : whether the Prothonotary and Senior Master has power to dismiss the suit for default. In my opinion, the answer should be in the negative. Perhaps the only provision to which such power can be traced is Rule 986. Rule 986 reads thus:

986.-Every plaint, memo of appeal, application for execution and all other applications and petitions of original nature including the petition by an indigent

person, in which, the Plaintiff/ Appellant/ Applicant/Petitioner does not remove the office objections within 30 days from the date of lodging the said documents, shall be placed before the Prothonotary and Senior Master for directions, who may reject such documents for non-removal of office objections. Rule 133 of these Rules will apply to such rejection.

3. On the plain language of this Rule, it is obvious that the plaint can be rejected for non removal of office objections and not for default of Advocates or parties to appear before the Prothonotary and Senior Master when the plaint is placed under caption direction.

4. Presumably, the Prothonotary and Senior Master was of the view that due to non filing of Affidavit, the position whether the defendants have been served was not clear, treating the same as Office objection. However, on reading of the order as a whole, the only reason that can be discerned is that the suit has been dismissed for default and not for non removal of office objection as such. In any case, the matter was listed on the given date under caption direction before the Prothonotary and Senior Master and not for dismissal due to non removal of office objection. Thus the said order passed by the Prothonotary and Senior Master dated 11th December 2006, cannot be allowed to stand. The same is set aside.

5. Accordingly, Motion is made absolute in terms of prayer Clause A. It is however ordered that the plaintiff shall file Affidavit of service to establish that defendants have been duly served with the Writ of Summons within two weeks from today, failing which the suit shall be dismissed for non prosecution without further reference to the Court.

6. Needless to mention that the Office will place this order before the Prothonotary and Senior Master for future guidance.