

Appeal Dy. No. 393/2019

Date: 02.11.2022

Rajesh Kumar and Anr. Vs. Kotak Mahindra Bank Ltd. and Ors.

Present: Shri S. K. Gupta, counsel for the appellants,  
Shri Rakesh Mishra, Ld. Counsel for the respondent No. 1-Bank,

The office report dated 01.11.2022 shows that as per tracking report, the respondent nos. 3, 4 & 5 have been served, but the notice sent to the respondent no. 2 has returned back with endorsement "insufficient address". Therefore, the learned counsel for the appellants is directed to take fresh steps for service of notice upon the respondent no. 2 through publication in the newspapers having wide circulation in the locality, where the said respondent resides. The affidavit of service along with proof of publication be filed by the next date.

The said report further shows that no reply has been filed by the respondent-bank. Let the same be filed by the next date.

Learned counsel for the appellant submits that he is neither borrower nor guarantor or mortgagor and is only owner of half portion of the property in question, therefore, his liability will be only to the extent of the same.

Learned counsel for the respondent-Bank has filed reply and stated that the appellant had paid Rs. 50,000/- towards court fee before the Tribunal below as per value of the property in question and the same is applicable here also.

The learned counsel for the appellant further submits that since the appellant is neither borrower nor guarantor or mortgagor and is only owner of half portion of the property in question, therefore, his liability is only to the extent of the value of half portion of the property in question and not more than that.

Let the learned counsel for the respondent-bank file better affidavit in response to the averment made by the counsel for the appellant by the next date.

List this case on 06.01.2023 for reply.

**Justice R. D. Khare**  
**Chairperson**