

Civil Procedure Code, 1908 (V of 1908), Order IX Rule 13, Order V Rule 9(5) – Summons issued by registered post was received back with postal endorsement of refusal (order dated 19.02.1997) – Sub-Rule (5) of Order V Rule 9 of the Code states inter alia that if the defendant or his agent had refused to take delivery of the postal article containing the summons, the court issuing the summons shall declare that the summons had been duly served on the defendant – Even after the passing of the ex-parte decree, report filed by the process server on 04.04.2000 in execution, clearly indicated that notice was served upon Respondent which was duly acknowledged by him by putting signature on the copy of the notice – Despite such knowledge, Respondent allowed the property to be put to auction in December, 2000 – Only after the auction was so undertaken, that application under Order IX Rule 13 was filed – High Court, rightly observed that Respondent was not vigilant – Yet, the High Court proceeded to grant relief in favour of Respondent – Fact that the auction was allowed to be undertaken, Respondent was disentitled from claiming any relief – Further, after completion of proceedings in auction, sale certificate was also issued in favour of the Appellant.

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