

- The refusal report submitted by the PS was valid and did not require examination of witnesses unless challenged through proper procedure.⁶

Judgement & Reasoning:

The HC:

- Found procedural irregularities, noting that neither the PS nor the affixation witnesses were examined, and the witnesses were not residents of the Appellants’ locality, making the service doubtful.⁷
- Emphasised that where service is alleged by refusal, “*the Court below is duty bound to examine the process-server,*” and failure to do so renders *ex-parte* proceedings unsafe.⁸
- Relied on Order V Rules 17 and 19 of the CPC and held that the TC must use its discretion to verify service and examine the PS to ascertain whether his report is correct or not.⁹
- Observed that acceptance of service report is “*a serious and solemn act and not merely an empty formality,*” as proper service ensures compliance with principles of natural justice.¹⁰
- Held that proof of service of summons is essential before proceeding *ex-parte*, and the TC must examine the PS and witnesses on oath to prevent false endorsements of refusal. Hence, the TC erred in proceeding *ex-parte* without proper verification.¹¹
- Recognized that procedural rules must advance justice, noting that “*Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that the parties do not resort to dilatory tactics but seek their remedy promptly.*”¹²
- Accepted the Appellants’ explanation for delay¹³ and held that the TC’s rejection of the application to set aside the *ex-parte* judgment and decree was unsustainable.¹⁴

Hence, the HC allowed the appeal and allowed the Appellants’ application to set aside the *ex-parte* judgment and decree passed by the TC. The matter was remanded to the TC for fresh adjudication on merits,¹⁵ subject to the Appellants complying with conditions including payment of costs and planting and maintaining 25 shade-bearing trees in a public area, imposed in public interest to promote environmental and community welfare.¹⁶

⁶ Paragraph No. 8 of the Judgement
⁷ Paragraph No. 12 of the Judgement.
⁸ Paragraph No. 13 of the Judgement
⁹ Paragraph No. 15 of the Judgement
¹⁰ Paragraph No. 16 of the Judgement
¹¹ Paragraph No. 17 of the Judgement.
¹² Paragraph No. 18 of the Judgement.
¹³ Paragraph No. 19 of the Judgement.
¹⁴ Paragraph No. 20 of the Judgement.
¹⁵ Paragraphs No. 22 of the Judgement.
¹⁶ Paragraphs No. 20 and 21 of the Judgement.

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