

A.No.3826 of 2016
in C.S.No.53 of 2015

M.M.SUNDRESH, J.

The applicant is the plaintiff in the suit filed for partition and separate possession. When the suit was posted before the learned Master, the second defendant could not be served by the applicant/plaintiff. Therefore, the learned Master was pleased to dismiss the suit as against the second defendant. Challenging the said order, the present application has been filed.

2.Learned counsel for the applicant submits that the second defendant is residing abroad. He also submits that now the applicant has got the address of the second defendant and steps would be taken to serve the second defendant. It is further submitted that the learned Master does not have any power or authority to dismiss the suit and at best, he should have posted the matter before the Court for passing appropriate orders.

3.Learned counsel for the first respondent/first defendant submits that it is the failure on the part of the applicant/plaintiff to serve the second defendant and therefore, no indulgence is required to be shown to the applicant/plaintiff.

4.As rightly submitted by the learned counsel for the applicant, the learned Master ought not to have dismissed the suit as against the second defendant. The proper course would have been to post the matter before this Court for further orders. In any case, the applicant has traced the address of the second defendant. Learned counsel for the applicant submits that the service would be effected by the applicant within a period of four weeks from today.

5.In view of the above, the order passed by the learned Master dated 18.07.2016 is set aside. The applicant is given further four weeks' time to effect service of notice on the second defendant, both through Court as well as privately.

6.With the above observation, this application stands allowed.

mmi

08.08.2016

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