

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER (ST.) NO. 24174 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 24175 OF 2017
IN
APPEAL FROM ORDER (ST.) NO. 24174 OF 2017**

Chandrakishore Kashiram Gupta
(since deceased) through legal heirs
Malti Chandrakishore Gupta & Ors. ...Appellants

Versus

Sharadaprasad Kashiram Gupta
(since deceased) through legal heirs
Savitridevi Shardaprasad Gupta & Ors. ...Respondents

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Mr. Bhushan V. Mahadik a/w. Mr. G.A.Ozalwar for the Appellants.
Ms. Ishita Shah i/b. Bhaskar & Co. for Respondent No.2

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: AUGUST 22, 2017**

P.C. :

1. Upon urgent mentioning, taken on Production Board.

2. This Appeal from Order is filed against the order dated 05.08.2017 passed by the learned Judge, City Civil Court, Gr. Mumbai, thereby allowing relief in terms of prayer clause (a) and (b) in Notice of Motion No. 4064 of 2015 in S.C.Suit No. 6781 of 2001.

3. Learned counsel for the appellants/original defendant nos. 1 (a) to 1 (e) submits that the trial Court has passed the ex-parte order in Notice of Motion. He admits that the counsel failed to appear before the trial Court when the Notice of Motion was heard.

4. Learned counsel for the respondents/ original plaintiffs submits that nearly on three occasions the matter appeared, however, inspite of service, none appeared for the original defendants. He further submits that the reply was not filed by the original defendants and, therefore, the learned Judge heard the matter ex-parte and passed the order.

5. It appears from the submissions that no appearance was given on behalf of the present appellants i.e. original defendants and the reply was also not filed by the original defendants, though they were served. However, it is a matter of appointment of the Court Receiver and possession of the suit property and, therefore, without going into merits of the matter, I hereby set aside the order dated 05.08.2017 passed by the learned Judge, City Civil Court, Gr. Mumbai, only on the ground that the appellants/original defendants to be given an opportunity of hearing and filing reply, subject to the payment of costs of Rs. 10,000/- to be paid to respondent no.2 within a period of one week. Parties to appear before the trial Court, especially the appellants/original defendants shall file reply on 29.08.2017 and copy of the reply is to be served on the respondents/original plaintiffs on that day. The respondents/original plaintiffs may file rejoinder, if any. Parties to co-operate with the trial Court and the trial Court may proceed with the matter and decide the date of hearing of the Notice of Motion as per its convenience.

6. Appeal from Order is disposed of accordingly.
7. In view of dismissal of the Appeal from Order, nothing survives in Civil Application and the same also stands disposed of.

(MRIDULA BHATKAR, J.)