

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

APPEAL FROM ORDER NO. 502 OF 2015

Mrs. Rafar Imran Shaikh and Ors. v/s. Hasanali Noorbhai Modi (since deceased) through Legal Heirs and Ors.	..Appellants ..Respondents
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Mr. Sushil Upadhyay, I/by Mr. A.M. Saraogi for the Appellants.

**CORAM : M.S. Karnik, J.
DATED : 27th August, 2018.**

P.C.

1. Heard learned counsel for the Appellants. The present appeal challenges the order dated 25th September, 2014 passed by the learned Judge, City Civil Court, Mumbai, in Notice of Motion No. 1599 of 2012 filed in the disposed of Suit No. 2605 of 1962. While dismissing the Notice of Motion No. 1599 of 2012, the Trial Court has observed that since tendering of the Notice of Motion No. 1599 of 2012 on 03.05.2012, the Applicant Rahat Mohd. has not served copy of the said Notice of Motion on the parties to the proceeding. The Trial Court was pleased to observe that the Applicant was much lethargic in perusing the matter therefore the request for further time to serve the Notice of Motion on parties to the proceeding stood rejected by the impugned order.

2. It would be material to note that in view of the consent terms filed by the parties, Suit No. 2605 of 1962 came to be decided. It appears that there is a delay in approaching the Civil Court for setting aside the consent terms which came to be filed way back on 18th September 1987 and modified consent terms filed on 10th January 1997.

3. Be that as it may, as in the Notice of Motion No. 1599 of 2012, the Trial Court had issued notices on the Respondents and having regard to the averments made in the present appeal that due to shortage of funds the Appellants were not in a position to take steps for publication of notice in the newspapers within the time granted, in the interest of Justice, I am inclined to set aside the impugned order. Moreover, a voluntary statement is made by the learned counsel for the Appellants that they would pay costs of Rs. 5000/- to M/s. Kirtikar Law Library within a period of two weeks from today.

4. In this view of the matter Notice of Motion No. 1599 of 2012 is restored. The Appellants to take necessary steps to comply with the order of publication as issued by the Trial Court within a period of four weeks from today.

5. Appeal from Order is disposed of accordingly.

(M.S. Karnik, J.)