

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO.1175 OF 2018
IN
COMMERCIAL ARBITRATION APPLICATION NO.23 OF 2017**

Kiran Mulji Shah & Anr.	..Applicants
In the matter between	
Mr.Kiran Mulji Shah & Anr.	..Petitioners
Vs.	
Mrs.Hetika Hitesh Sanghavi & Anr.	..Respondents

Mr.Reshant Shah i/b. M/s.Lex Conseiller for Applicants.
None for Respondents.

CORAM : G.S. KULKARNI, J.

DATE : 11th DECEMBER, 2018

P.C.:

Heard learned Counsel for the applicants.

2. By this motion, the applicants pray for setting aside the order dated 8 June 2018 passed by the Court dismissing the application for non-prosecution. Admittedly, the respondents had also not appeared when the Court passed the order dismissing the application for non-prosecution.

3. Learned Counsel for the applicants has drawn my attention to the order dated 13 April 2018 passed by the Court (S.J. Kathawalla, J.) which reads thus:-

“1. The learned Advocate for the Applicant states that Respondent No.2 has accepted Service, however, Respondent No.1 is refusing to accept service. In view thereof, a copy of this order shall be served on Respondent No.1 along with the papers and proceedings, by hand delivery. The Senior Inspector of the local police station shall render all assistance to the Advocate for the Applicant/Applicant in serving a copy of this order along with the proceedings on the Respondent No.1 and to obtain his acknowledgment. Stand over to 19th April, 2018.”

4. Learned Counsel for the applicants has also drawn my attention to the order dated 19 April 2018 passed by the Court (S.J. Kathawalla, J.) which reads thus:-

“1. Stand over to 27th April, 2018.
2. The Advocate for the Applicants shall serve a copy of this order alongwith the earlier order dated 13th April, 2018 by hand delivery on the Respondent No.1. The Senior Inspector/Inspector In-charge of the local Police Station shall assist the Applicants and/or their Advocate in serving a copy of the order dated 13th April, 2018 as well as a copy of this order on the Respondents and to obtain their acknowledgments.”

5. Learned Counsel for the applicants states that no prejudice would be caused to the respondents as the respondents had not appeared also in the past. He submits that in regard to the present application also, the applicants attempted to effect service on respondents and the affidavit of service to that effect shall be placed on record within one

week from today.

6. Having perused the affidavit in support of notice of motion, in my opinion, sufficient cause has been made out to allow the present notice of motion. It is accordingly allowed in terms of prayer clause (a) which reads thus:-

“(a) This Hon'ble Court be pleased to quash and set aside the order of dismissal dated 08/06/2018 passed by the Hon'ble Court in Commercial Arbitration Application No.23 of 2017 and further this Hon'ble Court be pleased to restore the Commercial Arbitration Application No.23 of 2017.”

7. No order as to costs.

[G.S. KULKARNI, J.]