

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

**SUIT NO. 1147 OF 2008
WITH
NOTICE OF MOTION NO. 89 OF 2019
IN
SUIT NO. 1147 OF 2008**

Shivkumar Chatrumal Achharya	...	Plaintiff/Applicant
Versus		
M/s. Sadguru And Krishna Developers & Ors.	...	Defendants

Mr. Amogh Singh i/b D.P. Singh for the Plaintiff/Applicant.
Mr. Manoj N. Nikose for Defendant No.2.

CORAM : R.I. CHAGLA, J.

DATED : 17th JUNE, 2019.

P.C. :

1 Heard the learned Counsel for the Applicant. By this Notice of Motion, the Applicant is seeking recall of order dated 24.07.2018 and for the Suit against Defendant Nos.2 and 3 to be restored to file. He states that it has been recorded in the order dated 24.07.2018 that Defendant Nos.2 and 3 have not been served and liberty was granted to the Plaintiff to take necessary steps in accordance with law to serve a fresh writ of summons on Defendant Nos.2 and 3 no later than by 01.10.2018, failing which the Suit will stand dismissed as against these Defendants without further reference to the Court.

2 He states that inadvertently a statement have been made to the Court on 24.07.2018 that Defendant Nos.2 and 3 were not served and would require a fresh writ of summons to be served on these Defendants. He refers to order dated 09.06.2008 wherein Defendant Nos.2 and 3 have been represented in the Suit and hence, no such directions were required to be issued for service of fresh writ of summons. Accordingly, he has stated that the order dated 24.07.2018 is required to be recalled and the Suit against Defendant Nos.2 and 3 be restored to file.

3 The learned Counsel for the Defendants submits to the orders of this Court. Accordingly, the Notice of Motion is required to be made absolute in terms of prayer clauses (a) and (b) and the order dated 24.07.2018 is required to be set aside as Defendant Nos.2 and 3 have appeared in the Suit and hence no fresh writ of summons was required to be served on them.

4 Notice of Motion is accordingly, made absolute in terms of prayer clauses (a) and (b).

(R.I. CHAGLA, J.)