

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

NOTICE OF MOTION NO.526 OF 2017

IN

SUIT NO.91 OF 2015

Kirit Mulji Shah

...Applicant-Plaintiff

V/s.

Munas Investment Pvt. Ltd.

...Defendant

Ms. Neeta Solanki for the Applicant-Original Plaintiff.

Mr. Vibhav Krishna for the Defendant.

CORAM : A. K. MENON, J.

DATED : 26TH OCTOBER, 2020.

(THROUGH VIDEO CONFERENCE)

P.C. :

1. This is an application seeking to set aside an order of dismissal dated 18th November 2016. The notice of motion is taken out on 18th February 2017. Mr. Vibhav Krishna, learned advocate for the respondent-original defendant seeks to oppose this motion. On a query from the court, it is stated that vakalatnama of the defendant was already filed in 2016. In the circumstances, the advocate for the defendant was bound to accept service of all processes by virtue of the Bombay High Court (Original Side) Rules.

2. On perusal of the order dated 18th November 2016, it appears that even the defendant's Advocate was not represented on that day. In the circumstances, the order dated 18th November 2016, in my view, is liable to be set aside. I accordingly, pass the following order :-

- (i) Notice of Motion No.526 of 2017 is made absolute in terms of prayer clause (a). Suit No.91 of 2015 is restored to file.
- (ii) In the circumstances, service of summons shall be effected on the defendant's Advocate on record within a period of four weeks from today.
- (iii) Written statement to be filed within a period of eight weeks from today.
- (iv) List the suit for directions in the normal course.
- (v) In view of the order passed today, Notice of Motion No.778 of 2015 is restored to file.
- (vi) At this stage, Mr. Krishna seeks time to file reply to Notice of Motion No.778 of 2015. Reply to be filed within a period of four weeks from today. Rejoinder, if any, to be filed within a period of four weeks thereafter.
- (vii) Notice of Motion No.526 of 2017 is disposed.

3. This order shall be digitally signed by the Private Secretary of the court.

(A. K. MENON, J.)