

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 293 OF 2021

IN

SUIT NO. 76 OF 2018

Prashant N. Chhajer ... Applicant/Plaintiff

vs.

Kishan Ramchandra Kank and Ors. ... Respondent

Mr. Sean Wassoodew a/w. Ms. Vijaya Ingule and Mr. Rupesh Mandhare for the Applicant.

Mr. Shivprasad Ramchandra Page for Defendant no. 2.

Mr. Veerdhaval Kakade for Defendant nos. 1 and 3 to 6.

CORAM : A. K. MENON, J.

DATED : 4th MARCH, 2021

P.C. :

1. Advocates are representing all defendants in this suit. Mr. Wassoodew states that the Prothonotary and Senior Master had on 2nd August, 2019 passed a conditional order that service of writ of summons upon defendant no. 6 was required to be completed on or before 15th October, 2019 failing which suit will be dismissed as against that defendant. Returnable date was then extended.

2. However it appears that on 12th March, 2019 i.e. several months before order was passed by the Prothonotary and Senior Master appearance had already been entered on behalf of defendant no. 6. In these circumstances suit would not have been dismissed since vakalatnama was already on record. It was open to the plaintiffs Advocate to serve writ of summons upon Advocate for defendant under Rule 51 of the Bombay High Court (Original Side) Rules. Learned Advocate for the defendant no. 6 states that he has no instructions to waive service under Rule 51. Mr. Wassoodew undertakes to serve writ of summons upon Advocate for defendant no.6. In this case I am of the view that order of dismissal is liable to be set aside. Accordingly, I pass the following order :

- (i) Suit is restored to file.
- (ii) Statement of Mr. Wassoodew is accepted. True copy of the plaint and annexures shall also be served within one week from today.
- (iii) Written statement shall be filed by defendant within a period of 12 weeks from today.
- (iv) Inspection shall be granted within two weeks from today.
- (v) Interim Application disposed in the above terms.

(A.K.MENON, J.)