

Corrected in terms of the order dated 01/04/2022

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.88 OF 2018**

Rao And Associates, a Partnership
Firm through Partner G.P.Kashi &
Anr. .. Appellants

Versus

Keshavlal Vrajlal Shroff (deceased) .. Respondents
through LRs and Ors.

...

Mr.Ramesh Soni i/b Mr.Ajit D. Hon for the Appellants.

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**CORAM: BHARATI DANGRE, J.
DATED : 21st MARCH, 2022**

P.C:-

1. Despite service being effected on respondent Nos.1.a to 1.c, 2 and 3 by substituted service, even today neither they are present nor they are represented through any counsel.

2. Heard the learned counsel for the appellants and perused the impugned order. On 15/11/2014, the City Civil Court, Mumbai, has recorded as under :-

“None for Plaintiff.

None for Defendant.

Plff Absent. Plff failed to adduce evidence in spite of adjournments. Suit is dismissed in default for non prosecution. Plff to bear his own costs and to pay the costs to the defendants of the suit.”

Thus, the suit filed for specific performance, came to be dismissed in default for non prosecution. A Notice of Motion was taken out on 27/02/2015 for restoration of the suit and the leave to register the Notice of Motion was granted. The notice issued to the respondents was made returnable on 24/04/2015. On the returnable date, an affidavit of service was placed before the Court reflecting that defendant No.1 and respondent Nos.4, 5 and 6 are served. Even at that time, respondent Nos.1 to 3 could not be served and, therefore, the plaintiff sought permission to serve them through Bailiff. On 16/07/2015, which was the next date, one week's time was sought to effect the service on defendant Nos. 1 to 3. On 20/01/2016, the learned Judge passed the following order.

“According to her the respnt. Nos. 1 to 3 has not served. Plff to take appropriate steps to serve the respondent by next date. If the plff fails to serve the respondents, the N/M shall stand automatically dismissed without reference.”

On 17/03/2016, the Notice of Motion was dismissed for want of service on defendant Nos.1 to 3 and it is this order, which is challenged in the present appeal.

3. From the past conduct of the respondent Nos.1 to 3 and which is reiterated in the present proceedings also, it is apparent that the said respondents are not desirous of putting

their appearance in this proceeding and even before the City Civil Court. The plaintiff had to take various steps to serve the respondents, but, ultimately the suit came to be dismissed on account of non effecting service on them. Even in this appeal, despite substituted service being effected and an affidavit to that effect being placed on record, the defendants have chosen to remain absent. This is indicative of the fact that, they are not desirous of being represented in the proceedings.

If this was the only ground for dismissing the suit of the plaintiff and, particularly, since the impugned order records that in-spite of the conditional order being passed, no steps have been taken to serve the respondents, I deem it expedient to allow the appeal on account of the conduct of the respondents depicted before this Court. Necessarily, the impugned order is quashed and set aside. Suit No.7265 of 1997, which was dismissed in default and the restoration of which was refused by the order passed on Notice of Motion No.2767/2016, is set aside. The City Civil Court shall proceed with the Suit alongwith Notice of Motion.

4. Since the suit is of the year 1997, the City Civil Court shall make every endeavour to culminate the proceedings in the suit within a period of one year from today.

(SMT. BHARATI DANGRE, J.)