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

NOTICE OF MOTION (SUITS) NO. 2548 OF 2018

IN
SUIT NO. 899 of 2016

Mukhtar Hussain Mohammed Khimji

Alias Gowa

... Applicant/Plaintiff

Versus

Zalawad Co-operative Hosusing Society Ltd

& Ors.

... Respondents/Defendants

Mr. Pravin B. Gole, Advocates for Applicant/Plaintiff.

None for the Respondents/Defendants.

CORAM : R.I. CHAGLA J.

DATE : 06TH FEBRUARY, 2023.

ORDER :

1. By this Notice of Motion, the Applicant/Plaintiff has sought condonation of delay of 33 days in filing the Notice of Motion, and recall of order dated 12th October, 2018 passed in Suit No.849 of 2016 dismissing the Suit against the unserved Defendants for default.

2. Learned counsel appearing for the Applicant/Plaintiff states that in the order dated 12th October, 2018 of which recall has been

sought, this Court dismissed the Suit for want of prosecution, so far as the Defendants who have not been served. In the affidavit in support of the Notice of Motion, particulars have been given of the Defendants who have been served which are total 23 in number. Service had been awaited for 7 Defendants. The Defendants who were not served, were total of 17 Defendants. These particulars are mentioned in paragraph 2 of the said Application.

3. Learned counsel for the Applicant/Plaintiff has also referred to paragraph 6 of the affidavit in support of the Notice of Motion wherein it is stated that, if the Suit was dismissed against unserved Defendants, then the Suit itself would become infructuous in view of the main contesting parties not appearing and the Suit not been adjudicated on merits. Accordingly, the present Notice of Motion is taken up for recall of the order dated 12th October, 2018.

4. Having perused the averments in the Affidavit in support of the Notice of Motion as well as taking note of the said order dated 12th October, 2018, which had dismissed, the Suit for want of prosecution against the Defendants who have not been served, I do not find any reason for recall of the order dated 12th October, 2018. The Plaintiffs had not taken desired steps in the above Suit for service of Writ of

Summons on 17 Defendants.

5. Considering that the Writ of Summons had not been served on these Defendants, this Court had dismissed the Suit for want of prosecution. It is well settled that, if the Writ of Summons had not been issued by the returnable date, an Application is required to be made for extension of the returnable date for issuance of Writ of Summons. I do not find any such Application having been made and accordingly the Plaintiffs were not desirous to proceed against the unserved Defendants. The relief sought for in the Notice of Motion cannot be granted.

6. Notice of Motion is accordingly disposed of.

[R.I. CHAGLA J.]