

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION (ST) NO.17859 OF 2023
IN
CIVIL REVISION APPLICATION NO.405 OF 2007**

Ushaben Parshuram Dave

...Applicant

V/s.

Kusum Vasudev Mhatre & Ors.

...Respondents.

Mr. Hemant Mehta a/w. Mrs. Jinal Mehta i/b. Mehta & Co. for the
Applicant

None for the Respondents.

CORAM : M. M. SATHAYE, J.

DATED : 20th FEBRUARY, 2024

P.C.:

1. Heard learned Counsel for the Applicant. None for the Respondents.

This is an Application for restoration of the above Revision Application, which is dismissed for want of prosecution on 17/03/2022. This Application is filed on 22/04/2022 and as such, there is a small delay of about 5 days in filing the above Application.

2. By order dated 11/12/2023 passed in this Application, it is already recorded that Respondent No. 1 has already expired and above Civil Revision Application is dismissed against Respondent Nos. 2, 3 and 5C and thereafter notices were issued to the Respondent Nos. 4, 5, 5B, 5D and 5E.

3. Pursuant to the said order, it appears that the Court Notices were

issued and Bailiff Report has returned with remarks that Respondent Nos. 4, 5A, 5B, 5D & 5E could not be found because the subject matter property was demolished and on enquiry with neighboring shops, it was informed that the occupants have shifted elsewhere.

4. Learned Counsel for the Applicant has relied upon affidavit of service dt. 04.01.2024 showing that the service upon the said Respondents is effected privately under private notice dated 27/12/2023, which is received by Respondent No. 5D on 03.01.2024 for himself and for other addresses (viz. the Respondent Nos. 4, 5B & 5E). Perused affidavit of service. Though service is seen effected on 4, 5B, 5D & 5E, there is nothing to indicate service upon Respondent No. 5A.

5. Learned Counsel for the Applicant states that the Revision Application was admitted and was pending for final hearing when the order dated 17/03/2022 was passed.

6. Private notices have been effected as permitted by this Court and Affidavit of service is filed producing the original acknowledgment. None appears for the Respondents. No reply is filed till date.

7. Therefore considering the extent of delay and averments in the Application, sufficient cause is made out, delay of about 5 days is condoned. The Application is allowed in terms of prayer clause (a) only.

8. The above Revision is restored to the file. It is however clarified that the Revision Application shall remain dismissed against the Respondent Nos. 2, 3, 5A and 5C.
9. Learned Counsel for the Applicant seeks liberty to withdraw this Application so far as prayer clauses (b) and (c) are concerned, with liberty to file appropriate fresh Application. Liberty granted. Interim Application is disposed of.
10. Learned Counsel for the Applicant is directed to furnish fresh addresses of remaining Respondent Nos. 4, 5B, 5D & 5E within a period of four weeks from today. Issue notice of above Revision Application thereafter to remaining Respondent Nos. 4, 5B, 5D & 5E returnable 8 weeks.
11. All concerned to act on duly authenticated or digitally signed copy of this order.

(M. M. SATHAYE, J.)