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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 904 OF 1997
WITH
INTERIM APPLICATION NO. 6820 OF 2024
IN
WRIT PETITION NO. 904 OF 1997
WITH
INTERIM APPLICATION NO. 1606 OF 2024
IN
WRIT PETITION NO. 904 OF 1997**

The Nashik Merchants Co-op. Bank Ltd, Nashik ... Petitioner/Applicant

vs.

M/s. Murli Industries, Nashik ... Respondent

Ms. Rukmini Khairnar i/b. Pramod N. Joshi, for Petitioner.

Mr. Farhan Shaikh i/b. Khandeparkar and Associates, for
Respondents.

CORAM : GAURI GODSE, J.

DATED : 25th APRIL 2024

P.C. :-

INTERIM APPLICATION NO. 6820 OF 2024

1. This application is for substituted service upon respondent under Order V Rule 20(1A) of the Civil Procedure Code, 1908 ('CPC'). Learned counsel for the applicant relies upon the affidavit

dated 23rd February 2023, filed by the clerk of respondent's advocate stating that the respondent was not available at the given address. She further relies upon the averments made in the application and submits that the sole proprietor of the respondent has expired. However, details of heirs and legal representatives are not available with the applicant. Learned counsel for the applicant also relies upon a letter dated 23rd February 2024, issued by the Secretary of the Cooperative Society of the address of the respondent. She submits that by the said letter advocate for the petitioner is informed that the death extract of the sole proprietor of the respondent and the particulars of heirs and legal representatives of the sole proprietor- Kanhayalal Ramdas Kotak are not available in the society record.

2. Learned counsel for the applicant thus submits that inspite of making efforts, particulars of heirs and legal representatives of the sole proprietor of the respondent is not available. She submits that the sole proprietor of the respondent is known to have been last resided in the given address. Hence, the petitioner be permitted to serve respondent by way of substituted service.

3. I have perused the application and the annexures. An Affidavit filed by the Clerk of respondent's advocate, indicates that the

security guard of the given address of the respondent had informed that the deceased- Kanhayalal Ramdas Kotak had shifted to another residence and gave a new address to the Clerk of the respondent's advocate. The said averment is in the affidavit of service dated 23rd February 2023, which is annexed at Exhibit-A to the present application. The letter dated 23rd February 2024 issued by the office of the Cooperative Housing Society of respondent's address indicates that the flat in question i.e. the flat of the address of respondent is in the name of one Mr. Chetan K. Kotak.

4. Perusal of the application is bereft of any application regarding efforts being made to trace the new address as was informed by the concerned security guard to the Clerk of respondent's advocate. The application is also bereft of any particulars with regard to the flat standing in the name of Chetan K. Kotak, and any inquiry of heirs and legal representatives of the sole proprietor. The application also does not contain any averment with regard to any particulars of the newspaper for publication of service.

5. The present application is filed for substituted service under Order V Rule 20(1A) of the CPC. In view of the aforesaid, I do not find any reasons to believe that the respondent - proprietary

concern is avoiding any service and it is not possible to serve the respondent by normal mode of service. For want of necessary requirement for service to be effected by way of substituted service, I am not inclined to allow the said application. The application is dismissed.

WRIT PETITION NO. 904 OF 1997

6. Writ Petition is pending for taking steps to serve the sole respondent. Learned advocate for the petitioner is at liberty to take appropriate steps to serve the respondent within 10 weeks from today, failing which the petition will stand dismissed without reference to the court.

(GAURI GODSE, J.)