

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

**APPEAL FROM ORDER NO. 618 OF 2015
WITH
INTERIM APPLICATION NO. 6672 OF 2024
WITH
CIVIL APPLICATION NO. 764 OF 2015**

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Ram-Saket Co-operative Housing Society Ltd.Appellant/Applicant
(Org. Defendant No.3)

Versus

Domnic Anthony D'Souza (Since Deceased)
Through His Legal Heirs
1(a) Smt. Luiza & D'Souza Ors.Respondents

Mr. Aditya Seetharaman i/by Mr. Vishal Shriyan for Appellant/Applicant.

**CORAM : JITENDRA JAIN, J.
DATED : 06th NOVEMBER 2025**

P. C. :

1. This appeal challenges the order passed on 07th April, 2015 in Notice of Motion No. 3969 of 2014 in Suit No. 182 of 1988. The impugned order dismisses the motion for setting aside an ex-parte order passed by the City Civil Court on 10th April, 2014. There is a delay of 171 days in taking out motion. The motion was filed by original defendant no.3.

2. In the impugned order in paragraph 10, there is a finding that prior to the increase in the pecuniary jurisdiction of the City Civil Court, the matter was filed in the High Court and the same was transferred to “unattended suit” as the defendant failed to appear before the High Court. There is also a finding that defendant no.3 filed the written statement after

a period of 17 years. The findings in paragraph 10 have not been controverted or disputed by the appellant.

3. In paragraph 11, it is further stated that the Prothonotary had issued a notice dated 28th December, 2012 indicating the transfer of all the suits which are below one crore to the City Civil Court. There is no dispute to this fact also.

4. Further in the same paragraph, there is a finding recorded by the City Civil Court that the notice was issued on 19th July, 2013 to defendant nos.1 to 3, but there was no appearance by the defendants. This has also not been disputed. If the contention of defendant no.3 is that the notice of 19th July, 2013 was not issued, then the remedy was to move the City Civil Court for appropriate directions, but the same has not been done.

5. The City Civil Court in paragraph 12 has also given reasoning that defendant no.3 did not take care of his litigation and the Court cannot be expected to inform him time and again. The City Civil Court has come to a conclusion that there is no sufficient and good cause for non-appearance and, therefore, the motion has been rejected.

6. I have considered the impugned order. In my view, no fault can be found in the impugned order for the reasons stated therein. Firstly, because of non-appearance of the defendant, the suit was transferred to “unattended suit”. Secondly, defendant no.3 filed the written statement after a period of 17 years which shows how much he was interested in the matter. Thirdly, the notice for transfer of the suit from High Court to City Civil Court was also published and there is no dispute to that. The City Civil

Court has also issued the notice on 19th July, 2013, but inspite of the same being served, there was no appearance.

7. Therefore, no ground is made out for recalling of the ex-parte decree or quashing the impugned order.

8. The appeal is dismissed.

9. Interim relief granted, if any, stands vacated.

10. Interim Application is disposed of in above terms.

11. Consequently, Civil Application does not survive and is disposed of.

[JITENDRA JAIN, J.]