

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 14008 OF 2024
IN
CIVIL REVISION APPLICATION NO. 115 OF 2007

Industrial Trading Agency And Ors. ...Applicants
Versus
Krishnakumar Girdharilal Gupta and Anr. ...Respondents

Ms. Shivani Agarwal i/b YNA Legal for the Applicants.
None for Respondents.

CORAM : M.M. SATHAYE, J.
DATE : 6th JANUARY 2026

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CHAVAN

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Date: 2026.01.08
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P.C. :

1. This is an application for restoration of the Civil Revision Application, which is dismissed for want of prosecution on 27.02.2024. The application is filed in October 2024. Apparently, there is delay in filing application.

2. On 27.02.2025, this Court issued notice to Respondent and permitted the Petitioner to serve the Respondent by private service in addition to the Court's notice. Direction was issued to file affidavit of service.

3. From the office note, it is seen that the affidavit of service is filed which is placed by the Registry before the Court as Flag 'X'.

4. There are consistent notes by the Registry stating that as per Court's order dated 27.02.2025, the Advocate for the Applicant has filed

affidavit of service on 22.07.2025. The notes also say that acknowledgment receipt for Respondent No. 2 is enclosed.

5. I have perused the affidavit of service affirmed on 13.12.2024 by the clerk of the Applicant's Advocate. Its annexure indicates that on 15.10.2024 (which is obviously after petition is dismissed for want of prosecution), a private notice is issued to one Adv Hina A. Mody stating that the concerned Advocate is an Advocate for Respondents. The original postal receipt produced along with affidavit of service also indicates that it is a notice issued to the said Advocate and not to the Respondent/party. The track report from the website of the Indian Post indicates that the item is delivered and based on this track report, it is claimed that service is complete. The affidavit of service also has an annexure which indicates that another Advocate – Desai & Diwanji purportedly advocate for Respondent No.2 has been served by hand.

6. In short, the affidavit of service does not have anything on record to indicate that any party Respondent is served. What is filed is nothing but a service upon Advocates. In such circumstances, though the notices are in fact served upon advocates, either through post or by hand delivery, question is whether such service can be treated as a service upon the party ?

7. It is elementary principle of law that on dismissal of proceedings, the authority of the Advocate engaged by the party comes to an end. After the petition is dismissed for want of prosecution, the proceedings come to an end and valuable rights accrue to the other side. After the petition is dismissed, the authority of advocate to accept service comes to an end under Order III, Rule 4, especially sub-rule (3)

(b) of Civil Procedure Code, 1908.

8. There is also a possibility that after dismissal of the petition, the concerned parties, who are under impression of disposal of proceedings, might have taken the papers and proceedings from the Advocate. Therefore, service upon Advocate of other side appearing prior to dismissal in default, is of no consequences. Of course, if such advocate appears before the Court and waives service with due undertaking to file fresh vakalatnama, then it is a different thing. Also service upon party through an advocate is also permitted under order of the Court.

9. This Court comes across affidavits of service, day in and day out, which are filed pursuant to the orders of the Court. The order of the Court permitting private notice is in aid of the Court's service. However, it does not mean that private service can be sent to the Advocates (whose authority has come to an end) and acknowledgment can be filed asserting completion of service. In such case, filing of affidavits of service not only increases the burden upon the Registry, but also creates confusion in the mind of the Court based on the office notes which simply state that 'affidavit of service is filed with acknowledgment of a particular Respondent'.

10. Many times it is found that after notices are issued, copies are not supplied to the office but affidavit of service is filed, meaning thereby, that private notices are sent diligently, however copies are not supplied for court's service.

11. In that view of the matter, the Registry is directed not to

accept any affidavit of service without verifying whether the notices were issued to the parties. If a service upon party-through-Advocate is permitted by the Court, then such order must be verified before accepting affidavit of service.

12. Registry is directed to circulate this order to the concerned officer/s, accepting filing of affidavit of service.

13. **So far as the present matter is concerned**, according to the office note, the Court's notice is not yet served upon Respondent. Therefore, await service for 4 weeks. Stand over to 03.02.2026.

(M.M. SATHAYE, J.)