

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.17832 OF 2025

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1. Aslam Abdul Rahim Goli (Since Deleted)

Through Legal Heirs

1(a) Noorjehan Aslam Goli

Widow of Aslam Goli & Ors.

...Petitioners

Versus

Mehmood Matloob Qureshi *alias* Munna & Ors.

...Respondents

Mr. S. Shamim a/w Murtuza Slatewala i/b S. Shamim & Co., for the
Petitioners.

Mr. A. N. Nasikwala, for the Respondents.

CORAM: MADHAV J. JAMDAR, J.
DATED: 02 FEBRUARY 2026

P.C.:

1. Heard Mr. Shamim, learned Counsel appearing for the Petitioners
and Mr. Nasikwala, learned Counsel appearing for the Respondents.

2. By the present Writ Petition filed under Article 227 of the
Constitution of India, the challenge is to the legality and validity of the
Order dated 4th October 2025 passed by the learned Judge, Small
Causes Court, Mumbai in Marji Application No.42 of 2020 in Mesne
Profit Application No.254 of 2018 in RAE Suit No.1417/2209 of 2010
("impugned Order").

3. By the impugned Order, the said Marji Application was allowed by condoning the delay of 199 days in filing the said Marji Application as well as by setting aside the ex-parte decree dated 3rd May 2019 in Mesne Profit Application No.254 of 2018, subject to cost of Rs.50,000/-.

4. It is the submission of Mr. Shamim, learned Counsel appearing for the Petitioners that the Respondents have been served on number occasions and that in fact, there is refusal to accept the service. He submits that, when the summons was sought to be served on the Respondents, Arshi Qureshi—daughter of Respondent No.1, was present and she refused to accept the service. He further submits that in view of the law laid down by a Division Bench of this Court [Nagpur Bench] in the case of *Rajkumar Sampatraoji Kuthe v. State of Maharashtra*¹, the said service is a good service. He also relies on the following decisions of the Supreme Court :-

i. *Sunil Poddar And Others v. Union Bank of India* ²

ii. *Vishwabandhu v. Sri Krishna And Another* ³

5. On the other hand, Mr. Nasikwala, learned Counsel appearing for the Respondents, submits that the Respondents have not been served and, therefore, the impugned Order is correctly passed.

6. A Division Bench of this Court in the decision of *Rajkumar Sampatraoji Kuthe* (supra), has held that the restrictions placed by the

1 2011 SCC OnLine Bom 1249

2 (2008) 2 SCC 326

3 (2021) 19 SCC 549

Bombay Amendment of the *Code of Civil Procedure, 1908* (“CPC”) that service of summons may be made only on an adult male member of the family residing with the Defendant is inconsistent with Order V Rule 15 of CPC which permits service to be made on any adult male member of the family, whether male or female. By the said decision, it has been held that, in view of the enactment of the Code of Civil Procedure (Amendment) Act, 2002, the said restrictions placed by the Bombay Amendment will no longer survive and, in fact, it has been directed as follows in Paragraph No.6 :-

“6. In view of above, the subordinate courts are directed to ignore the restrictions contained in Order V, Rule 15 of the Code of Civil Procedure, as amended by the Bombay High Court with effect from 1-10-1983, which requires service to be done only on adult male member of the family and instead follow Rule 15 of Order V of Code of Civil Procedure 1908 as enacted by Parliament, which reads as follows:

***“15. Where service may be on an adult member of defendant’s family.—** Where in any suit the defendant is absent from his residence at the time when the service of summons is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and he has no agent empowered to accept service of the summons on his behalf, service may be made on any adult member of the family, whether male or female, who is residing with him.*

Explanation.— A servant is not a member of the family within the meaning of this rule.”

Order accordingly.”

7. Thus, it is clear that the Division Bench of this Court has specifically directed all the Courts in the Maharashtra to ignore the restrictions contained in Order V Rule 15 of CPC, as amended by the Bombay High Court with effect from 1st October 1983, which requires service to be done only on adult male member of the family and instead follow Rule 15 of Order V of CPC as enacted by Parliament, which provides that service may be made on any adult member of the family, whether male or female, who is residing with him.

8. Admittedly, the daughter of Respondent No.1 i.e. Arshi Qureshi is staying with Respondent No.1. Thus, service on her or refusal by her to accept the service, is a good service.

9. In any case, at this stage, Mr. Nasikwala, learned Counsel for Respondent No.1 who is the contesting Respondent, fairly states that, as several factors have not been taken into consideration, the impugned Order be quashed and set aside by consent and the said Marji Application No.42 of 2020 in Mesne Profit Application No.254 of 2018 in RAE Suit No.1417/2209 of 2010 be remanded back to the learned Judge of the Small Causes Court at Mumbai. Mr. Shamim, learned Counsel for the Petitioners, also makes the said request.

10. Accordingly, by consent of the parties, Order dated 4th October 2025 passed by the learned Judge, Small Causes Court, Mumbai in Marji Application No.42 of 2020 in Mesne Profit Application No.254 of

2018 in RAE Suit No.1417/2209 of 2010 is quashed and set aside and said Marji Application No.42 of 2020 is restored to the file of the learned Judge of the Small Causes Court at Mumbai.

11. The concerned learned Judge is requested to decide the said Marji Application No.42 of 2020 expeditiously on or before 31st July 2026, as the same is arising out of the Mesne Profit Application of the year 2018.

12. All the contentions of both the parties are expressly kept open.

13. Thus, the Writ Petition is disposed of in above terms with no order as to costs.

[MADHAV J. JAMDAR, J.]