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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 77 OF 2026
IN
COMMERCIAL SUIT NO. 74 OF 2021**

Fairwealth Financial Services ... Applicant
Limited

In the matter between

National Stock Exchange of India ... Plaintiff

Vs.

Fairwealth Securities Limited and Ors. ... Defendants

**WITH
INTERIM APPLICATION NO. 1694 OF 2021
IN
COMMERCIAL SUIT NO. 74 OF 2021**

National Stock Exchange of India ... Applicant

Vs.

Fairwealth Securities Limited and Ors. ... Defendants

Mr. Ranjeev Carvalho a/w. Mr. Sachin Chandarana, Mr. Jaiveer Dhakan i/b. Manilal Kher Ambalal and Co. For the Plaintiff.

Ms. Akanksha Agrawal a/w. Mr. Manish Bohra for Defendant No. 7.

CORAM : GAURI GODSE, J.

DATE : 20th JANUARY 2026

ORDER :

1. This application is by defendant no. 7 for recalling and

setting aside order dated 25th February 2025 directing to proceed with the suit ex-parte. The applicant further prays for permission to file written statement. Learned counsel for the applicant submits that writ of summons were never served upon defendant no. 7. She relies upon the averments in the application to support her submissions that the writ of summons were served upon defendant no. 7.

2. Learned counsel for the plaintiff relies upon order passed by this court on 29th June 2022 in the Interim Application No. 1724 of 2022 permitting service of writ of summons by substituted service by affixing the summons on the address and publication in newspaper. He therefore submits that pursuant to the order passed by this court, defendant no. 7 was served by substituted service.

3. A perusal of the record does not indicate that service on defendant no. 7 through regular mode was attempted. It appears that based on the bailiff's report regarding service of writ of summons on defendant nos. 1 to 6, substituted service was permitted for service of writ of summons also upon defendant no. 7 along with defendant nos. 1 to 6. In the absence of any proper service report by the plaintiff or by the

Sheriff's office that any attempt was made to serve the writ of summons through regular mode upon defendant no. 7, service of writ of summons by substituted service cannot be accepted as a proper service of writ of summons on defendant no. 7.

4. In a commercial suit the right of defendant is forfeited if written statement is not filed within 120 days from date of service of writ of summons. Hence, service of writ of summons upon the defendant is significant. In the absence of any material to show that attempt was made to serve defendant no. 7 through regular mode, in the present case, it cannot be accepted that writ of summons was duly served upon defendant no. 7. In response to the statement made in the application that writ of summons was not served to defendant no. 7, the plaintiff has not filed on record any material to indicate that writ of summons was attempted to be served upon defendant no. 7 through regular mode of service.

5. Hence, in view of the facts of the present case service of writ of summons upon defendant no. 7 is not seen. Hence, defendant no. 7 would be entitled to file written statement.

6. For the reasons recorded above, interim application is allowed in terms of prayer clause (a) and (b).

7. Defendant no. 7 shall file the written statement within four weeks from today.

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8. Defendant no. 7 is permitted to file affidavit-in-reply within four weeks.

9. Stand over to 24th February 2026. To be listed on the next date for hearing of other pending applications.

[GAURI GODSE, J.]