

REGULAR CIVIL SUIT NO. 277 OF 2020**ORDER BELOW EXH. 98**

1. The applicant-plaintiff has filed this application praying for refund of Rs.500/- penalty imposed upon him while passing order below Exh.45 and has mainly submitted that though he had served on the defendants regarding the order passed below Exh.5, and the acknowledgment receipt of service on the defendants also was produced on 07/10/2021 vide Exh.16, the same was overlooked mistakenly at the point of time and penalty was imposed on him mistakenly. Hence, it is also prayed that the necessary corrections also required to be made in order below Exh.45.
2. Read the application. Heard the Ld. Advocate for the plaintiff. Perused the record.
3. Perusal of the record, it transpires that the receipts were produced by the plaintiff at the point of time which was recorded vide Exh.16. It is also required to be noted that while drafting the order below Exh.45, the record of the case became so bulky and this Court tried to find any acknowledgment slip / receipt of the service on defendants regarding order below Exh.5, but somehow this Court could not find the same or let us say it got overlooked in the bulky record. Hence, on 11/03/2024, before pronouncing order below Exh.45 by this Court, this Court had asked the plaintiff to check the whole case record in order to confirm, whether he had served Order Exh.5 on the defendants or not. In response, the Ld. Advocate for the plaintiff himself thoroughly checked the case record and after his satisfactory check, the Ld. Advocate for plaintiff had confirmed that he might have missed to serve on defendants a copy of order below Exh.5. It is only after getting confirmation from the Ld.

Advocate for plaintiff after his due check of the record, the penalty was imposed on the plaintiff for default in serving copy of order below Exh.5. Accordingly, the Ld. Advocate agreed and immediately paid the penalty of Rs.500/- to DLSA. **The order below Exh.45 imposing penalty was passed by this Court on 11/03/2024.** Thereafter, somehow the Ld. Advocate for plaintiff certainly recalled that he had served the copy of order below Exh.5 on defendants for sure and produced acknowledgment receipt of the same also at the point of time. Hence, immediately, the Ld. Advocate for plaintiff again, with permission of Court, checked the case record minutely and found the acknowledgement receipts produced vide Exh.16 on 07/10/2021 which was regarding service of copy of order below Exh.5 on the defendants. **Immediately thereafter, the plaintiff filed this application on 21/11/2024** praying for refund of the penalty stating the acknowledgment slip / receipt of the service produced vide Exh.16 was overlooked mistakenly. The Ld. Advocate for plaintiff has shown Exh.16 which proves that he had served the defendants with a copy of order below Exh.5.

4. Thus, considering the above stated facts and circumstances of the case and application, and finding the plaintiff not committed contempt of Court's direction vide para 12B of order below Exh.5 dated 13/08/2021, this Court finds it fit to pass following order:

ORDER

- The present application Exh.98 is hereby partly allowed.
- It is hereby declared that the plaintiff has not committed contempt of Court's direction given vide para 12B of the Order below Exh.5 dated 13.08.2021.
- Accordingly, the necessary correction to be made in order below Exh.45.

- The present application is hereby disposed off accordingly.

Pronounced in the open Court today i.e. 9th June, 2025.

Date : 09/06/2025
Place : Gandhinagar

(Kalyani N. Trivedi)
8th Additional Civil Judge,
Gandhinagar.