

PW.1 present, plaintiff and defendant No.6 counsel present.

Sri. B.H. for defendant No.6, the City Municipal Counsel, Harihar submits that, in this suit there was no service of summons on defendant No.6. That as per ordersheet dated: 18.01.2021, the AGP filed memo of appearance for defendant No.1 to 3, 5 to 7 and that AGP could not have filed vakalath for defendant No.6. That on 24.03.2021, the written statement of defendant No.6 was taken as not filed. Therefore, there was no proper service of summons on defendant No.6. That the matter was previously highly contested in OS No. 56/2014 and therefore, now as there is no service of summons on defendant No.6, he prays that a suit summons be issued to defendant No.6.

Perusal of the material on record, discloses that the plaint is returned for presentation before this court by the II Addl. Civil Judge and JMFC, Harihar as per the order dated: 17.03.2020 for want of pecuniary jurisdiction and later this suit came to be instituted by the plaintiff.

As per the decision of our Hon'ble Supreme Court in Exl Carriers and another Vs. Frankfinn Aviation Services Pvt. Ltd., reported in (2020) 12 SCC 667, it is held that when there is return of plaint, the proceedings has to commence de novo.

Therefore, after presentation of the plaint, as per the ordersheet the suit summonses were issued. The

note of the office dated: 19.01.2021 discloses that AGP filed memo of appearance for respondent No.1 to 3, 5 to 7. Thereafter the matter was posted for evidence. Later, as per ordersheet dated: 07.06.2022, there is a note that Smt. K.S.S. Advocate filed vakalath for defendant No.6 on 05.08.2020. Further, the ordersheet dated; 22.07.2022, discloses that my Predecessor has ordered for showing the name of Smt. K.S.S. Advocate as the advocate appearing for defendant No.6. Later her name is shown to defendant No.6 in the cause title. The material on record also discloses that said Smt. K.S.S. Advocate participated in the proceedings and even she has filed objections to a IA No. II on 29.11.2022 on behalf of defendant No.6.

Therefore, if these facts are considered, it cannot be said that there was no service of summons on defendant No.6.

It appears after Smt. K.S.S. filed vakalath for defendant No.6, there was no opportunity given to her to file the written statement. Therefore, it is necessary to given an opportunity to defendant No.6 to file the written statement.

Hence, for written statement of defendant No.6 by: 06.06.2026.

Senior Civil Judge & JMFC,
Harihar