

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL I.P. SUIT NO.103 OF 2012**

Girdharilal B.Nayyar )....Plaintiff

V/s.

Indus Wam Syndicate and Ors. )....Defendants

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Ms.Khevana Dagli I/by A.M.Saraogi for plaintiff.

Mr.Ram Mani Upadhyay for defendant no.1.

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**CORAM : K.R.SHRIRAM,J**

**DATE : 17.7.2019**

**P.C.:-**

1. In this suit, plaintiff has taken out a Notice of Motion against defendant nos.2 to 17 for decree against the said defendants under Rule 90 of the High Court (O.S) Rules. In the affidavit-in-support it is stated that writ of summons has been served upon defendant nos.2 to 17 despite which defendant nos.2 to 17 have failed and neglected to appear before this Court. To the affidavit-in-support is annexed a photo copy of a letter dated 21.3.2013 from the Advocate on record addressed to the 16 defendants and also annexed are photo copies of postal receipts issued for having paid R.P.A.D. charges. To the affidavit, however, there is no proof of service annexed. Therefore, on 19.6.2019 when the Counsel for plaintiff informed the Court about

pendency of this Notice of Motion, he was asked to file affidavit of service. Counsel stated that he will file affidavit of service of writ of summons upon defendant nos.2 to 17 except defendant no.10 who has been deleted and also another affidavit of service proving service of the Notice of Motion with affidavit of service upon defendant nos.2 to 17. These affidavits were to be filed before the next date which was 3.7.2019. On 3.7.2019 matter did not get called out due to paucity of time. So on 4.7.2019 counsel for plaintiff did something which is totally not acceptable. At 11.00 A.M. a junior of the Advocate on record mentioned the matter and sought an extension to serve the writ of summons. A long praecipe was flashed to the Court and was handed over to the Court Master. Without suspecting, the Court extended the time to serve writ of summons by 4 weeks. It was the duty of the Counsel to point out to the Court that order as recorded in paragraph-4 dated 19.6.2019 had been passed. I would say Court was misled in granting the extension.

This is because a positive statement has been made in the affidavit-in-support of Notice of Motion No.408 of 2017 that writ of summons has been served on defendants and if that is the case, there was no need to seek an extension on 4.7.2019 for serving the writ of summons. There is no explanation either coming from plaintiff's advocate as to why service was not effected through the usual mode

i.e., through the Sheriff's Bailiff.

2. Mr.Upadhyay for defendant no.1 states on this ground alone, suit as against defendant nos.2 to 17 (except defendant no.10) should be dismissed.

3. It is rather unfortunate that the Court was made to pass an order of this nature by misleading the Court.

4. Ms.Dagli apologies on behalf of the advocate on record for plaintiff Mr.Saraogi and regrets that such thing happened. She assures that this will not be repeated.

5. Ms.Dagli states that plaintiff will withdraw Notice of Motion No.408 of 2017 and undertakes to serve fresh writ of summons on defendant nos.2 to 17 (except defendant no.10) through the usual mode, i.e., office of Sheriff of Mumbai. Ms.Dagli states pursuant to extension granted on 4.7.2019, plaintiff has already applied for issuance of writ of summons and the same will be lodged by tomorrow in the office of Sheriff of Mumbai. Undertaking accepted.

6. At the same time, plaintiff would be an innocent victim of

such a misadventure of the Advocate and I do not wish plaintiff to be the sufferer. It makes no sense therefore in proceeding with the recording of evidence of plaintiff at this stage. Plaintiff shall ensure that the office of the Sheriff of Mumbai dispatches the writ of summons within one week of lodgment and so far as defendants who are based in Mumbai are concerned, plaintiff will also have the writ of summons served by the Sheriff's Bailiff by hand delivery.

7. Stand over to 23.8.2019 for directions.

8. For the misadventure, in my view, plaintiff should also put to terms. Plaintiff shall give donation of Rs.25,000/- to "Dean pbcf Kem Hospital", K.E.M.Hospital, Dr.E.Borges Road, Parel, Mumbai-400 012 and this amount shall be paid within two weeks from today.

Notice of Motion No.408 of 2017 stands dismissed as withdrawn.

**(K.R.SHRIRAM,J)**