

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 1659 OF 2015

M/s Aparna Properties Pvt. Ltd. ..Petitioner

Vs.

M/s Forbes and Company & Ors. ..Respondents

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Mr. Vishal Kanade a/w Sahil Saiyed and Ms. Shreema Doshi,
Advocates i/b Wadia Ghandy & Co. for Petitioner.

Mr. R.J. Thakkar, Advocate for Respondent No.1.

Mr. Kevin Chettiar, Advocate for Respondent No.2.

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CORAM : N.M. JAMDAR, J.

DATED : 24 MARCH 2015

P.C.:

By this petition, the petitioner challenges the order dated 4 December 2014 passed by the Small Cause Court Judge rejecting the application filed by the petitioner-original Defendant Nos.2 and 3 for taking their affidavit in reply to the application of the Respondent No.2 for dismissal of the suit.

2. In the suit filed by the Respondent No.2-original plaintiff, an application was taken out by Defendant No.1 for dismissal of the suit. In this application, the plaintiffs filed their reply and Defendant No.1 filed their affidavit in rejoinder. The matter was thereafter argued from time to time. The arguments were heard

from 15 September 2014 to 7 October 2014. During the hearing, petitioner's advocate was present. After the arguments were concluded, the matter was closed for final order and posted on 14 October 2014 and thereafter on 13 November 2014. At this stage the petitioner filed an application for filing an affidavit in reply on record. This application was rejected by the learned Small Causes Court Judge by the impugned order.

3. The application was obviously at very belated stage. Cogent reason had to be given why it was moved at such belated stage. The petitioner gave only one line explanation that the Defendant No.3-the Managing Director of the petitioner was out of India and therefore necessary instructions could not be given to his advocate. The period during which the Defendant No.3 was out of India is also not specified. The application was made in totally casual manner. Even if the Defendant No.3 was out of India, this submission is misconceived. Many modes of electronic communication are available. It is not the case that the Defendant No.3 is illiterate or cannot afford telecommunication devices.

4. The learned Small Causes Court is burdened with huge pendency of the matters and casual reopening of matters, which are

fully heard would mean that the learned Judge will have to hear the matter all over again, keeping aside the other matters. Other parties will ask for further time to file their replies. It is also not fair to the Court who gave adequate opportunity to all the parties and closed the matter in November 2013 for orders. A party must take judicial process seriously and cannot approach it with such abject casualness, as the petitioner and Defendant No.3 have done. The fact that the Defendant No.3 simply went out of India without bothering to give instructions or keep in touch with his advocate indicate that he does not find the proceedings important. It is either utter casualness or deliberate design to delay the proceedings.

5. Furthermore, if the application filed by the Respondent No.2 is allowed, it is the plaintiff who will be most aggrieved. Both the plaintiff and Respondent No.3 have filed their replies and rejoinder. Therefore taking an overall view of the matter, no indulgence be extended to the petitioner. The learned Judge has rightly rejected the application.

5. The Writ Petition is accordingly rejected.

[N.M. JAMDAR, J.]