

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 832 OF 2015
IN
SUIT NO. 2975 OF 2005**

Dewanchand Ramsaran Industries
Pvt. Ltd.& Ors.

.. Applicants/Org.Pltfes.

In the matter between :

Dewanchand Ramsaran Industries
Pvt. Ltd.& Ors.

.. Plaintiffs

Vs.

Suresh Jayantilal Thanawala (HUF)
& Ors.

.. Defendants

Mr.Vishal Kanade a/w. Mr.Madhu Hiraskar & Mr.Vachan Bodke i/b Chitnis
Vaithy for plaintiffs.

Ms.Megha Martins i/b M/s. Purnanad & Co. for defendant nos.1 and 2.

Mr.Aditya Thakkar a/w. Mr.Deepak Shukla i/b Vinod Mistry & Co. for
defendant nos.3 to 12.

**CORAM : K.R.SHRIRAM, J.
DATED : 9TH OCTOBER, 2015**

P.C.

1 This notice of motion is taken out on behalf of the plaintiffs to recall the order dated 23.06.2014 on which date the suit came to be dismissed for default and restore the suit to file. The counsel for defendant nos.1 and 2 and defendant nos.3 to 12 opposed the notice of motion. Both the counsels stated that there is no explanation as to why, nobody remained present on 18.06.2014 and 23.06.2015 and there is no explanation in the affidavit in support for delay in taking out the notice of motion. Even if the Court

considers that there is some explanation, still the explanation is not satisfactory and the Court should not exercise its discretion in recalling the order of dismissal.

2 In paragraph no.4 of the affidavit in support, the plaintiffs have explained that the name of the advocate on record for the plaintiffs has been mis-spelt in the cause list and when their clerk took search in the cause list by typing the correct name of the plaintiff's advocate, the matter did not appear to have been listed. Today, when internet facility being available, it is common knowledge that everybody is relying on the internet to check whether a matter is listed or not. In fact, of late, this Court has gone a step further and is also informing the advocates on record by SMS. A copy of the board is also annexed at pages 11 to 20 and it does appear that the name of the advocate for the plaintiff is incorrectly spelt.

3 As regards delay, I would still exercise my discretion to overlook the delay. The reason for this decision is that this suit was filed in the year 2005. For years, the matter has not appeared on board and suddenly got listed on 18.06.2014. Therefore, the suit has been pending in this Court for 9 years. Defendant nos.1 to 12 have also filed their written statements. Therefore, in my view, no prejudice will be caused to the defendants if the delay is

condoned. The order of 23.06.2014 is recalled and the suit is restored to file. Accordingly, this notice of motion is allowed in terms of prayer clauses (a) and (b).

4 The counsel appearing for the opposing defendants are pressing for costs. In my view, they are justified in doing so because had the plaintiffs been present on the dates when the suit was last listed, the need to take out the present notice of motion would not have arisen and the defendants would not have incurred costs on the counsels etc. The plaintiffs are, therefore, directed to pay a sum of Rs.10,000/- to defendant nos.1 and 2 and another Rs.10,000/- to the advocate for defendant nos.3 to 12. This amount has to be paid by cheque drawn in the name of advocate on record and the same to be paid within two weeks from today.

5 The suit to be listed on 27.10.2015. In the meanwhile parties to file their respective affidavit of documents and also complete discovery and inspection.

(K.R. SHRIRAM, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order/judgment.