

VPH

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

APPEAL No. 709 OF 2014
IN
NOTICE OF MOTION No. 2923 OF 2010
IN
SUIT No. 13 OF 2010
WITH
NOTICE OF MOTION No. 392 OF 2014

Sahjun Impex Trading Pvt. Ltd. ... Appellant /
Applicant

Vs.
The Official Liquidator of
Patheja Forgings & Auto Parts
Manufacturers Ltd. (In Liqn.) & Ors. ... Respondents

Mr. Zubin Behramkamdin a/w Niranjan Amit & Prerak Sharma i/b B.
Amin & Co., for the Appellant.

Mr. Snehal Shah a/w M/s. Geetanjali Joshi i/b Doijodi Associates, for
Respondent No. 7.

Mr. Monil Punjabi i/b Apex Law Partners, for Respondent No. 11.

CORAM : V. M. KANADE, &
REVATI MOHITE DERE, JJ.

DATE : FEBRUARY 6, 2015

PC.

1. The Appellant is challenging the order dated 23rd
December, 2013 passed by the learned Single Judge, dismissing the
Notice of Motion No. 2923 of 2010 on the ground that motion is not

served on Defendants. The Appellant has filed affidavit of service stating therein that it has served Defendant Nos. 1 to 6 and 8 and 9. It is stated in one of the grounds raised by the Appellant in the appeal memo viz. (J) that Defendant Nos. 7 and 11 were present in the Court when the motion was called out. Be that as it may. The notice of motion could have been disposed of on merits instead of dismissing it for want of prosecution. The impugned order dated 23rd December, 2013 is set aside and Notice of Motion No. 2923 of 2010 is restored to the file.

2. Plaintiff to serve Defendant No. 7 copy of the notice of motion within 2 weeks, who shall file reply within 4 weeks thereafter. Appeal is allowed and disposed of in the aforesaid terms.

3. In view of disposal of appeal, Notice of Motion No. 392 of 2014 taken out therein does not survive and is accordingly disposed of.

[REVATI MOHITE DERE, J.]

[V. M. KANADE, J.]

Vinayak Halemath