

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO.203 OF 2014
IN
NOTICE OF MOTION NO.2116 OF 2012
IN
SUMMARY SUIT NO.4400 OF 2001

M/s Prabhat General Agency and anr.	... Appellants
v/s	
Smt Sushila H. Jhunjhunwala	... Respondent

Mr Yatin Shah for Appellants.
None for Respondent.

**CORAM: V.M. KANADE &
B.P. COLABAWALLA JJ.**

RESERVED ON : 8th June, 2015
PRONOUNCED ON : 10th June, 2015

P.C. (PER B.P. COLABAWALLA J.) :-

1. By this Appeal, exception is taken to the order passed by the learned Single Judge dated 25th October, 2013. By the impugned order the Learned Judge dismissed the Notice of Motion filed by the Appellants for setting aside the ex-parte decree passed in the above

summary suit. The Appellants before us were the original Defendants in the suit.

2. The ground for setting aside the ex-parte decree, as set out in the affidavit in support of the Notice of Motion, was that Defendant No.2 (who is the Karta of Lachhiram Chudiwala and the Proprietor of Defendant No.1), was suffering from various diseases and was not in a position to move around; that his son, even though was taking care of him and his old wife, had refused to fund any litigation attended by Defendant No.2. Because of these circumstances, Defendant No.2 had written letters dated 7th October, 2011 and 14th February, 2012 to the Prothonotary and Senior Master of this Court requesting for an appointment of a competent Advocate from the Legal Aid Cell to assist him. These letters were not responded to and accordingly the ex-parte decree came to be passed.

3. The said Notice of Motion was vehemently opposed by the Plaintiff by filing an affidavit in reply dated 13th September, 2012. The entire history of the matter has been set out by the Plaintiff in the

said affidavit and more particularly from paragraphs 5 to 35 thereof. On a perusal of the said affidavit, it is quite clear that the Defendants have time and again engaged in dilatory tactics to ensure that the suit does not reach its logical conclusion. The tactics adopted by the Defendants to try and delay the suit, have also been set out in considerable detail by the Learned Judge in paragraphs 3 and 4 of the impugned order.

4. Considering these facts, and which are uncontroverted, we do not think that the learned Single Judge was in any error whilst dismissing the Notice of Motion. In view thereof, we find no merit in this Appeal and the same is dismissed. This is a fit case to impose costs, but be refrain from doing so only looking to the advance age of Defendant No.2.

(B.P. COLABAWALLA, J.)

(V.M. KANADE J.)