

mm

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

**NOTICE OF MOTION NO. 604 OF 2014
IN
NOTICE NO. 1421 OF 2002
IN
EXECUTION APPLICATION NO. 428 OF 2002**

Dyandev ramchandra Shinde ...Applicant (Orig. Plaintiff)

Vs.

Tara-Baug Aikyaawardhak Co-op.

Hsg. Soc. Ltd.

...Respondent (orig. Defendant)

Mr. Kapil Shetye for Respondent / Defendant

**CORAM : MRS. ROSHAN DALVI, J.
DATED :28TH JANUARY, 2015**

P.C. :

1. The above notice was dismissed for want of prosecution under a common order passed by the Court under Rule 329 of the High Court Original Side Rules. The order of dismissal is sought to be set aside and the notice is sought to be restored to file.
2. The plaintiff's decree has been long delayed. The plaintiff was represented by an Advocate who obtained the decree for the plaintiff and has expired thereafter. Another Advocate took out the above notice in November, 2002. That notice was indeed not prosecuted and hence it came to be dismissed. The plaintiff has alleged that his Advocate did not act to execute the decree. The

new Advocate filed his Vakalatnama since November, 2011. Even the present Advocate did not prosecute the notice so it came to be dismissed as aforesaid on 24th September, 2012.

3. The plaintiff appears to have suffered at the hands of all the Advocates. Unfortunately the first Advocate expired, thereafter the two Advocates have not acted in pursuance of the decree already obtained. The plaintiff desires to prosecute the notice and the execution application. The plaintiff appears to have sought the papers from the department. The papers were misplaced and a complaint in that behalf came to be filed by the plaintiff after dismissal of the notice unknown to the plaintiff. The complaint has been received by the office of this Court on 3rd March, 2014. That complaint is not the part of the affidavit of the plaintiff. A separate copy has been given to Court as also to the Advocate for the defendant / judgment debtor.
4. Nevertheless since it is relied upon, the copy has been furnished it must be considered. It is seen that the papers were misplaced. The plaintiff is of advanced age of 84 years and has yet sought to prosecute the complaint. The plaintiff is, therefore, not an unconcerned decree holder. In fact the plaintiff's decree has remained for many years unexecuted.
5. On the application of the plaintiff the decree obtained by him deserves to be allowed to be executed. Hence the order dated 24th

EXA.428/2002(14)

September, 2012 is set aside so far as it relates to the applicant / original plaintiff in the above suit.

6. The delay in taking out this application is condoned.
7. The Notice No. 1421 of 2002 is restored to file along with the Execution Application No. 428 of 2002.
8. The Advocate for the applicant / original plaintiff shall serve a copy of the notice upon the Advocate for respondents / original defendants during the course of the day.
9. The notice is adjourned to 11th February, 2015.

(ROSHAN DALVI, J.)