

Sharayu.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION
NOTICE OF MOTION NO. 63 OF 2015
IN
TESTAMENTARY SUIT NO. 17 OF 2015
IN
TESTAMENTARY PETITION NO. 282 OF 2014

Sunder Newandram Awatramani	...Applicant
<i>In the matter between</i>	
Sunder Newandram Awatramani	...Plaintiff
<i>Versus</i>	
Bina Lal Awatramani	...Defendant

Mr. Gaurang Mehta, i/b Vidya Khatu, for the Plaintiff.
Mr. T. Cooper, a/w Mr. Jahan Dastur and Mr. Rahul Hingmire i/b
M/s. Hariani & Co., for the Defendant.

CORAM: G.S. PATEL, J
DATED: 4th August 2015

PC:-

1. Heard.
2. On 4th February 2015 a self-operative order was passed issuing directions after issues were framed. The Plaintiff was to file

his and his attesting witness's Evidence Affidavits, his Affidavit of Documents, and a compilation of documents on or before 25th February 2015. The order stated that in default of compliance, the Suit was to stand dismissed.

3. It appears that the Plaintiff did not comply with these directions. In the Affidavit in Support of the present Notice of Motion, the Plaintiff states that on 10th March 2015, the matter was taken up for directions. None appeared on behalf of the Plaintiff on that day. In fact, it was noted that none appears in the previous occasion on 4th February 2015. On account of non-compliance by the Plaintiff with the directions issued on 4th February 2015, the Suit and the Petition were both dismissed for non-prosecution.

4. In paragraphs 4 and 5 of the Affidavit in Support of the Notice of Motion, the Plaintiff sets out a justification and reasons for not being able to comply with the directions. The Plaintiff states that he is 74 years old and he is, since November 2014, suffering from several health issues that affect his normal routine. A medical certificate of 21st November 2014 is annexed as **Exh.9** to this Affidavit. It appears that the Plaintiff depended on his Advocate at that time. He says that the Advocate did not attend to the matter. It is on account of the Advocate's non-appearance that the Suit and the Petition were dismissed. He has since changed Advocates.

5. It is well settled that no party should suffer on account of the default of his appointed Counsel or Advocate. I see no reason to deny the Plaintiff reliefs.

6. The Notice of Motion is made absolute in terms of prayer clauses (a), (b) and (c). The Testamentary Suit No. 17 of 2015 and Testamentary Petition No. 282 of 2014 are immediately restored to file.

7. Having done this, it cannot be that the Plaintiff is entitled to an indefinite extension of time for compliance. Mr. Mehta, learned Counsel for the Plaintiff, states that there is a likelihood that the Plaintiff will need to undergo a liver surgery shortly. His reports are awaited. If indeed that is so and is established by appropriate documentation, I will give the Plaintiff extended time to comply. If not, the Plaintiff will have time not beyond 24th August 2015 to comply with the directions in the order dated 25th February 2015.

8. List the matter for directions on the supplementary board on Friday dated 7th August 2015.

9. Mr. Cooper presses for costs saying that the Plaintiff has continuously harassed the Defendant and is deliberately delaying the matter. The Defendant is also a senior citizen. Mr. Cooper insists that the Plaintiff be put to terms. Mr. Cooper is certainly entitled to make this demand. The Plaintiff will, irrespective of the date finally fixed for the compliance, pay to the Defendant costs quantified at Re. 1/- to paid by cheque as a condition precedent.

(G. S. PATEL, J.)