

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

**NOTICE OF MOTION NO. 1021 OF 2015
IN
SUIT NO. 1416 OF 2010**

Mr.Vinod Virji Gada & Anr. .. Applicants

In the matter between :

M/s. Mount Mary Enterprises .. Plaintiff

Vs.

The Authorized Officer,
Bank of Baroda & Ors. .. Defendants

**WITH
NOTICE OF MOTION NO. 1335 OF 2015
IN
SUIT NO. 1416 OF 2010**

M/s. Mount Mary Enterprises .. Plaintiff

Vs.

The Authorized Officer,
Bank of Baroda & Ors. .. Defendants

Ms.Yasmin Tavaría for plaintiff.

Mr.A.B.Shinde for defendant no.1.

Ms.Anita Castellino i/b Visas & Co. for defendant no.2.

Mr.Shikhir Grover i/b Lambay & Co. for defendant nos.3A & 3B.

Mr.A.M. Khandekar i/b Tamhane & Co. for defendant nos.5 and 6.

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

P.C.

NOTICE OF MOTION NO. 1021 OF 2015

1 This notice of motion is taken out on behalf of defendant nos.5 &
6/applicants to condone the delay in filing the written statement and take the
same on record.

2 The counsel appearing for the plaintiff strongly opposes the motion
and states that (a) defendant nos.5 and 6 cannot take out this notice of
motion together; (b) in the alternative, if this Court is inclined to consider
the application and allow it, then defendant nos.5 and 6 should be put to
terms as the defendants had enough opportunity.

3 As regards the first objection, I do not see any reason why defendant
nos.5 and 6 have to take out separate notices of motion. Even assuming that
they should have taken out separate notices of motion, it is a purely
technical objection which is being raised by the plaintiff. If this notice of
motion is dismissed on this ground, defendant nos.5 and 6 will have to take
fresh notice of motion it will only add to the backlog of the matters pending
in this Court. I am inclined to overrule this objection.

4 As regards the other objection that the defendant nos.5 and 6 have had
enough chance, by an order dated 28.04.2015, defendant no.6 was added as
defendant. In the order, it is also mentioned that certain other averments in

the plaint have been raised and all the defendants, in view thereof were granted time of 30 days to file their written statement/additional written statement.

5 It is true that the said 30 days period expired quite some time ago. At the same time, it is noted that the suits have been pending in this Court over years together. The counsel appearing for defendant nos.5 and 6 further states that their written statement is ready and will be lodged in the registry on 12.10.2015. Therefore, in the interest of justice, I am inclined to allow the notice of motion in terms of prayer clause (a).

6 At the same time, the counsel for the plaintiff is justified in pressing for costs inasmuch as had the applicant/defendant nos.5 and 6 complied with the directions passed by this Court on 20.04.2015 and subsequently, the applicant would not have had to take out this notice of motion causing the plaintiff to incur costs in opposing the notice of motion. Therefore, defendant nos.5 and 6 are directed to pay a sum of Rs.10,000/- as costs. This amount is to be paid by way of cheque drawn in favour of advocate for the plaintiff.

7 Defendant no.1 has filed the written statement and defendant nos.2 to 4, however, have not filed the written statement. The same to be filed within two weeks from today. As regards, the other defendants, the counsel for the plaintiff has insisted that the suit be transferred to the list of undefended suits. However, the respective counsels appearing for the respective defendants make an oral request that they be given one last opportunity. In view thereof the remaining defendants are granted one last opportunity to file their written statements and serve copy thereof upon the advocate for the plaintiff on or before 23.10.2015. Each of the defendant viz. defendant no.2, 3(a) and 3(b) and 4 to pay a sum of Rs.5,000/- as costs to the advocate for the plaintiff by way of cheque drawn in favour of the advocate of the plaintiff.

8 Suit be placed for directions on 29.10.2015.

NOTICE OF MOTION 1335 OF 2015

9 The counsel for the plaintiff states that this notice of motion has been served upon the defendants way-back in August 2015 and none of the defendants have filed their reply. At the request of the counsels appearing for the respective defendants, last chance is granted to file affidavit in reply and serve a copy upon the advocate for the plaintiff on or before 23.10.2015.

Should the plaintiff wish to file an affidavit in rejoinder, the same to be filed and copy served on or before 31.10.2015.

10 Stand over to 23.11.2015 for hearing of the notice of motion.

(K.R. SHRIRAM, J.)

CERTIFICATE

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