

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

NOTICE OF MOTION NO.1188 OF 2014

IN

SUIT NO.1966 OF 2001

M/s. Hundalani Finance & Leasing Co. Ltd. ... Plaintiff
Vs.
M/s. Vatan Dychem (Exports) Ltd. & Anr. ... Defendants.

Mr. Jaydeep Deo, Adv. for plaintiff.
Mr. Anurag Gokhale, for Official Liquidator.

CORAM : MRS. ROSHAN DALVI, J.
DATE : 10th April, 2015.

P.C. :

1. Defendant No.1 company has been wound up. The Official Liquidator in respect of defendant No.1 company has been appointed on 2nd December, 2013. When the suit reached hearing counsel on behalf of the plaintiff stated to Court that the plaintiff's claim would be lodged before official liquidator. In view of that statement the suit came to be disposed of.

2. The plaintiff would contend that it is entitled to a decree against defendant No.1 which is now represented by the official liquidator and the statement of the counsel was made erroneously. Hence plaintiff has applied for recalling the order dated 2nd December, 2013.

3. The plaintiff would be entitled to prosecute the suit upon obtaining leave of the competent court. The plaintiff would be entitled to exparte decree which would be then be lodged with the official liquidator to consider the priority of claims. Despite this legal

position a statement came to be made erroneously. Hence this required to be corrected.

4. Counsel on behalf of the official liquidator contends that the claim has yet not been lodged and hence this Notice of Motion cannot be granted.

5. The plaintiff would not lodge its claim if the plaintiff is entitled to an ex parte decree which would then be filed with the official liquidator. Hence the order dated 2nd December, 2013 is required to be recalled to allow the plaintiff the right to prosecute the suit as per law.

6. The suit would survive also against defendant No.2 who is the director of defendant No.1 and a guarantor which has given personal guarantee to plaintiff. Defendant No.2 is shown to be served the writ of summons. He has not claimed service effected by RPAD. Substituted service by publication has been effected.

7. The suit has to proceed against defendant No.2 also.

8. Hence Notice of Motion is made absolute in terms of prayers '2' and '3'. The plaintiff shall be entitled to prosecute the suit subject to the necessary leave of the competent court. Notice of Motion is disposed of accordingly.

9. Suit is adjourned to 11th June, 2015.

(ROSHAN DALVI, J.)