

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1235 OF 2014
IN
SUIT NO. 1091 OF 2004**

Seema A.K. Sahu

.. Plaintiff

Vs.

Ramchandra Bhatt & Ors.

.. Defendants

Mr.Suresh Dubey for plaintiff.

Mr.R.M.Nakhwa i/b Vasant Dhawan for defendants.

CORAM : K.R.SHRIRAM, J.

DATED : 14TH OCTOBER, 2015

P.C.

1 This notice of motion is taken out by the plaintiff to recall the order passed on 28.11.2007 dismissing the suit for default. The order reads as under :

“ The above matter appeared for directions on 21st August 2007 and it was adjourned to 12th October 2007 as the Plaintiffs and Advocates remained absent. On 12th October 2007 again the Plaintiffs and Advocates remained absent and the matter was placed on board today for dismissal. Today also Plaintiffs and Advocates are absent. Suit dismissed for default.”

2 The notice of motion for restoration has been lodged 19.09.2014 after a delay of almost seven years. As mentioned in the order of dismissal, the matter appeared on 31.08.2007 and was adjourned to 12.10.2007. On 12.08.2008, nobody was present for the plaintiff and it was stood over to 28.11.2007. On 28.11.2007, it came to be dismissed as once again the plaintiff and the advocate were absent.

3 As regards the absence, on 31.08.2007 and 12.10.2007, it is simply stated in the affidavit that “..... *unfortunately, through oversight the plaintiff CA as well as the advocate could not remained present before the learned Prothonotary on both dates, as there was lapse on the part of the clerk in giving the dates.*” This explanation is not satisfactory. There is no affidavit of clerk.

4 As regards, 28.11.2007, there is no explanation at all as to why nobody was present for the plaintiff. In paragraph 4, it is stated that the plaintiff is living out of India and in paragraph 5, it is stated that the plaintiff came to India on 22.07.2014 and returned to Dubai on 26.07.2014. However, there is no explanation as to what the plaintiff did between November 2007 and July 2014.

5 In the circumstances, though the applicant is expected to give explanation for each day delay, there is no explanation also as to why nobody was present when the suit was listed. I see no merits in the notice of motion. The notice of motion stands dismissed.

(K.R. SHRIRAM, J.)

CERTIFICATE

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