

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1391 OF 2015
IN
SUIT NO. 2430 OF 2012

Priti Nakul Asthana & Ors.

.....Plaintiffs

: V/S :

Sitaldas Estate Pvt. Ltd .

.....Defendant

* * * * *

Mr. Nirav Barot i/by. Maneksha & Sethna, Advocate for the original plaintiffs.

Mr. Vishal Kanade a/w. Mr. Deepak Poonamiya, Advocate for the applicant/original defendant.

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Coram :- Smt. R.P. SondurBaldota, J.

22nd September, 2015.

P.C. :-

1). This Notice of Motion taken out by the defendant is for setting aside the order dated 31st July, 2014 by which the Prothonotary & Senior Master of this court transferred the suit to the list of undefended suits. The defendant also seeks condonation of delay in taking out the Notice of Motion and in filing written statement within a period of 12 weeks, from the date of directions.

2). In the affidavit in support of the Notice of Motion, the

defendant claims that, it has not been served with the writ of summons at any point of time and that it learnt about pendency of the present proceedings only when copy of Chamber Summons (Lodg) No. 1210 of 2005 was served upon it. After receipt of copy of the Chamber Summons, the defendant through its Advocate got the enquiries made with the plaintiff, as well as, with the Court office and then took out the present Notice of Motion.

3). It appears that before the writ of summons could be served upon the defendant, one of the plaintiffs expired and his heirs were brought on record. After the amendments the summons in the suit was sent by Registered Post A.D. to the defendants at the instance of the plaintiff. The same was accepted by one, Jabad on 15th April, 2014. The plaintiff filed affidavit of service based on the acknowledgment of Registered Post A.D., on the basis of which the suit was ordered to be heard ex-parte for want of appearance. It is the claim of the defendant that, no person by name Jabad is working with it and that it has not infact received any Registered Post A.D. from the plaintiff. Mr. Kanade, the learned Advocate appearing for the defendant submits that, there is no reason whatsoever for the defendant to avoid service of summons in the suit, since there are already proceedings pending between the parties in the Court of Small Causes. There is nothing to disbelieve the claim.

Therefore it must be held that writ of summons was not served upon the defendant. As a consequence, the defendant did not enter appearance and file written statement.

4). Therefore, the Notice of Motion is allowed in terms of prayer clauses (a) and (b).

(SMT. R.P. SONDURBALDOTA, J)

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(sr. no.18)

Tuesday,22.9.2015

CERTIFICATE

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