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

**NOTICE OF MOTION NO. 1672 OF 2013
IN
NOTICE OF MOTION NO.2195 OF 2010
A/W
CHAMBER SUMMONS NO.1707 OF 2009
IN
SUIT NO. 1124 OF 2006**

Jagat V. Kantharia	...Applicant
In the matter between	
Mr Atul Kantharia & Anr.	...Plaintiffs
VS	
Mrs Jayshree Bhatt & Ors.	...Defendants

.....
Mr Kunal Dwarkadas a/w Ms Bijal Mehta i/b Deven Dwarkadas & Partners for
Plaintiff No.2
Ms A.S.Patki i/b M.P.Vashi & Associates for Defendant Nos.1 and 2.
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CORAM : S.C. GUPTE, J.

NOVEMBER 16, 2015

P.C. :

The Notice of Motion seeks restoration of another Notice of Motion which was dismissed for default. That Notice of Motion was for restoration of the suit which was dismissed for want of prosecution on 2 September 2009. The suit was dismissed for default of appearance of the Plaintiffs on that date. The suit was placed on board on at least three earlier occasions, i.e. 16 April 2009, 6 July 2009 and 6 August 2009, when the Plaintiffs remained absent. The suit was finally adjourned to 2 September 2009. Even on that date, none appeared for the Plaintiffs. The suit was, therefore, dismissed for want of prosecution. The Plaintiffs thereafter took out a Notice of Motion, being Notice of Motion No.2195 of 2010, for restoration of the suit. This Notice of Motion itself was taken out after a delay of several months. When that Motion was called out for hearing, none appeared for the Plaintiffs. The Motion was, therefore, dismissed for want of

prosecution on 28 November 2011. More than about 2 years after the dismissal of that Notice of Motion, the present Notice of Motion is taken out for restoration of the earlier Notice of Motion. In the original affidavit filed in support of the present Notice of Motion, there was hardly any averment explaining the delay of more than two years in taking out the present Notice of Motion. The Plaintiffs simply averred that the Plaintiffs and their Advocates were absent on 28 November 2011, when the Notice of Motion was dismissed for want of prosecution. There was no explanation about either the absence of the Plaintiffs and their Advocates on that day or earlier three dates. So also, there was no explanation why the present Notice of Motion was taken out after nearly two years of dismissal of the first Notice of Motion. When this was pointed before the Court at the earlier hearing, Counsel for the Plaintiffs sought leave to file an additional affidavit in support of the Notice of Motion. That leave was granted. In the additional affidavit filed on 23 October 2015, the Plaintiffs have now sought to explain the absence of the Plaintiffs and their Advocates on four occasions, when the suit was listed for hearing, i.e. 16 April 2009, 6 July 2009, 5 August 2009 and 2 September 2009, simply by submitting that the Plaintiffs had engaged Advocate and that the absence of Advocate on these four occasions came as a surprise to the Plaintiffs. The Plaintiffs themselves say that the excuse given by the Advocate for absence on these four dates was unreasonable and unprofessional. It is not possible to believe the Plaintiffs' statement that the Plaintiffs themselves did not know about all these dates. It was for the Plaintiffs to diligently prosecute their suit keeping in touch with their Advocate. They cannot simply get away by submitting that the Advocate did not bother to inform them about the dates.

2 Coming now to the dismissal of the earlier Notice of Motion filed for restoration of the suit, the Plaintiffs have sought to explain their new Advocate's absence on the ground that he was physically challenged and that there was no assistance available to him on the particular date. What is strange is that even after the Notice of Motion was dismissed, there was no step taken by the Plaintiffs for nearly two years. They seek to explain this by stating that the Plaintiffs did not follow up with their new Advocate, because they thought that suit had been restored. They also seem to suggest that their new Advocate also did

not know that their Motion was dismissed for default. This is no explanation for the gross delay in taking out the present Notice of Motion. The Plaintiffs claim to have appointed their present Advocates (yet another new Advocates) in November 2013, asking the latter to follow up the status of the suit. It is common knowledge that the status of suits is always displayed on the site of this Court and is readily available to every litigant. It is not possible to accept the Plaintiffs' stand that the Plaintiffs could have learnt about the status of the suit only after they contacted their new Advocates in November 2013 i.e. nearly two years after the dismissal of their Motion for restoration of the suit.

3 In the premises, there is neither explanation for the delay in taking out the present Notice of Motion nor any justifiable reason to explain the absence of the Plaintiffs and their Advocates on four occasions when the suit appeared on board before this Court or on the date when the earlier Notice of Motion was dismissed for default.

4 There is, thus, no merit in the present Notice of Motion. The Motion is dismissed. There shall be no order as to costs.

(S.C.GUPTE J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/ Order.