

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 1328 OF 2014****IN****SUIT NO. 217 OF 2010**

Telebrands (India) Pvt.Ltd.

...Plaintiff / Applicant

vs.

Bennet Coleman & Co. & Anr.

...Defendants

Mr.Mahesh Mahadgut for Plaintiff.

Mr.Amit Jasandekar with Mr.Vinay Parelkar i/b. Mr.V.A. Associates for Defendants.

CORAM : S.C. GUPTE, J.**20 JANUARY 2015****P.C. :**

This Notice of Motion is taken out by the Plaintiff / Applicant for setting aside a dismissal order and restoration of the suit. The suit was dismissed on 1 March 2013. There is a delay in taking out the present suit. The explanation of the Plaintiff / Applicant is that earlier the Plaintiff was represented by M/s.Nankani & Associates, Advocates. In or about December 2011, the Plaintiff decided to change the Advocates and proposed to engage M/s.Asian Patent Law, a proprietary concern of Mr.B.N. Poojari, Advocate. On 26 December 2011, the Plaintiff obtained a no objection endorsement of M/s.Nankani & Associates on the vakalatnama to be signed in favour of M/s.Asian Patent Law. The vakalatnama in favour of M/s.Asian Patent Law was signed on 31 December 2011 and on the same date, the same was handed over to Mr.B.N. Poojari, Advocate. The vakalatnama was duly accepted by Mr.B.N. Poojari. It appears that this vakalatnama was not filed by Mr.B.N. Poojari and the same remained with him. Naturally, therefore, when the suit appeared on board before this Court on 28 February 2013 as well as on 1 March 2013, the name of M/s.Nankani & Associates appeared on the board as advocates of the Plaintiff. The Advocates having already given their no objection did not appear for the Plaintiff on both the occasions. It is submitted that in these premises, the Plaintiff was not represented

before the Court when the matter was called out on 28 February 2013 and 1 March 2013. It is the case of the Plaintiff that the Plaintiff came to know about the dismissal of the suit much later, when it proposed to hand over the papers in another suit filed by it to its present Advocate. That was around July 2014. Upon discovery of the order of dismissal in July 2014, the Plaintiff claims to have immediately addressed a letter dated 18 July 2014 to Mr.B.N. Poojari seeking his explanation in the matter. There was no reply from Mr.Poojari. In the premises, the Plaintiff has approached this Court for restoration of the suit.

2 Though the facts indicated above do not particularly disclose the Plaintiff's diligence in prosecuting the suit, it may not be fair to visit the consequences of a lapse on the part of its advocate on the Plaintiff, and completely non-suit it.

3 In the premises, it will be appropriate to set aside the order of dismissal of the suit and restore the suit on the file. The Defendants can be compensated by payment of costs. Accordingly, the Notice of Motion is made absolute in terms of prayer clause (a). The Plaintiff shall pay costs of Rs.30,000/- to the Defendants. The costs shall be a condition precedent.

(S.C. Gupte, J.)