

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

**NOTICE OF MOTION NO.1504 OF 2014
IN
SUIT NO.3783 OF 1994**

P. Banerji Mihijam ... Applicant/Plaintiff
versus
IPCA Health Products Pvt. Ltd. ... Defendant

Mr. A.I.Sethna i/by Mr. S.M.Chandan, for Applicant.
Mr. Darshan Mehta i/by M/s. Dhruve Liladhar and Co., for Defendant.

CORAM: S.J. KATHAWALLA, J.

DATE: 1st JULY, 2015

PC.:

1. By the present Notice of Motion, the Applicant/Plaintiff seeks the following reliefs :

- (a) that this Hon'ble Court be pleased to condone the delay of 315 days in taking out the present Notice of Motion;
- (b) that this Hon'ble Court be pleased to quash and /or set aside the order dated 8th January, 2014 dismissing the above suit No.3783 of 1994 for non-prosecution / want of evidence and restore the same to its original position i.e. for filing of Plaintiffs' evidence.

2. The order dated 08-01-2014 by which the above Suit was dismissed reads as under :

“1. On 20-09-2013 this Court (Coram : S.C.Gupte, J.) passed the following order :

“The parties have exchanged their respective statements of admission and denial of each other's documents. The Plaintiff has filed his affidavit of documents together with compilation and his affidavit in lieu of examination-in-chief. It seems there are discrepancies between the list of documents annexed to the affidavit of documents and the reference to those documents in the affidavit by way of examination-in-chief. The Plaintiff may consider filing of an additional/substituted affidavit by the next date. This is a last opportunity given to the Plaintiff to put his house in order.

By consent, adjourned to 27th September, 2013”.

2. The Plaintiff failed to comply with the said order, instead on 27th September, 2013, the Advocate for the Plaintiff sought leave of the Court to withdraw the Affidavit of Evidence, Affidavit of Documents as well as Compilation of Documents and to file a fresh Affidavit and Compilation of Documents. Paragraph No.3 of the order dated 27-09-2013 is relevant and is reproduced hereunder :

“3.The matter is adjourned to 18th October, 2013 on an express understanding that no further time will be granted and the matter will proceed on that day”.

3. The Suit is of the year 1994. Despite three months having passed from the date of the above orders, the Plaintiff have not filed any Affidavit of Evidence or Affidavit of Documents and

Compilation of Documents. The reason given is that the Plaintiff is old. Such excuse cannot be accepted and infact if the Plaintiff is old, the Plaintiff and his Advocate ought to have complied with the orders of the Court, at the earliest and proceeded with the matter. In view thereof, the Court is constrained to dismiss the above Suit. The Suit is therefore, dismissed for want of prosecution”.

3. From the aforesaid order, it is clear that the Applicant/Plaintiff has not complied with the orders passed by this Court since September, 2013. The reason given in the Affidavit-in-Support of the Notice of Motion is that the Plaintiff was unwell and continues to be so. The certificate of the Doctor attending to the Plaintiff is produced in Court, which shows that the Plaintiff has been unwell since the year 2005. Infact, if the Plaintiff is unwell as mentioned in the Doctor's certificate, the Plaintiff as well as his Advocate should endeavour to comply with the orders passed by this Court at the earliest in a Suit which is pending before this Court since 1994 and proceed with the trial of the Suit. Instead, the Plaintiff has failed to comply with the orders passed by the Court for more than a year. The above Notice of Motion is taken out more than 10 months after the Suit was dismissed. In view of this conduct, the Defendant is put to grave hardship and inconvenience. No case is therefore, made out for restoration of the Suit. However, since the Advocate

for the Plaintiff on instructions undertakes to pay on or before 5th August, 2015 cost of Rs.2,00,000/- to the Defendant, the undertaking is accepted and the Notice of Motion is allowed in terms of prayer clauses (a) and (b), reproduced above. The order dated 29-09-2013 shall be complied with by the Plaintiff within a period of one week from today.

4. The Notice of Motion is accordingly disposed of.

(S.J.KATHAWALLA, J.)