

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

NOTICE OF MOTION NO.2034/2015
IN
SUIT NO.745/2013

Zenith Park Chamber Summons Ltd. ... Applicant / Defendant

V/s.

M/s. Zenith Enterprises ... Respondent / Plaintiff

Ms. Eventa Gonsalves for the Applicant
Mr. Rafique Peer Moideen a/w. Reshma Fernandes i/b. Prakash Panjabi
for the Respondent.

CORAM: K.K. TATED, J.
DATED : DECEMBER 15, 2015

PC. :

1. Heard the learned counsel for the parties. This Notice of Motion is filed by the Defendant for setting aside conditional order dated 19/09/2014 passed by the Prothonotary and Senior Master of this court by which the present suit was transferred to the list of undefended suits for want of written statement from the Applicant Defendant.

2. The learned counsel for the Applicant submits that, for the first time, they learnt about the suit filed by the Plaintiff when they received letter dated 12/02/2015 from this court. Thereafter they immediately tried to find out whether they received a copy of the plaint along with summons. She submits that the person who accepted the summons on

behalf of the society, failed to inform the concerned Secretary/Chairman. Hence, there is delay in filing the written statement. In support of the this contention, the learned counsel for the Defendant relies on paragraph 4 to 8 of the Affidavit-in-support of the Notice of Motion. She submits that in the interest of justice, this Hon'ble Court be pleased to condone the delay in filing the written statement and allow the Defendant to defend the suit on its own merits. She submits that if delay is not condoned, irreparable loss and injury will be caused to the Defendant.

3. On the other hand, the learned counsel for the Plaintiff vehemently opposed the Notice of Motion. He submits that the matter appeared before the Prothonotary and Senior Master on several occasions. None appeared on behalf of the Defendant though the summons was duly served. Hence, the office issued notice to the Defendant. Considering the negligence on the part of the Defendant and since none appeared on behalf of the Defendant, there is no substance in the Notice of Motion. Same be dismissed with costs.

4. Heard the learned counsel for the parties. Considering the submissions made by the learned counsel for the Applicant and the reasons given in paragraph 4 to 8 of the affidavit-in-support of the Notice of Motion, I am satisfied that the Applicant has made out a case for allowing the Notice of Motion. At the same time, the Applicant has to pay cost of Rs.7500/- to the Plaintiff or their Advocate on or before 12/01/2016.

5. Hence, the following order:
- a. Order dated 19/09/2014 passed by the Prothonotary and Senior Master by which the matter was transferred to the list of undefended suits, is set aside.
 - b. Delay in filing the written statement is condoned.
 - c. The Defendant to file written statement in the Registry on or before 08/01/2016 with copy to other side.
 - d. The Defendant to pay cost of Rs.7500/- to the Plaintiff or their Advocate on or before 08/01/2016, failing which the Notice of Motion shall stand dismissed without further reference to the court.
 - e. Notice of Motion stands disposed of accordingly.

(K.K. TATED, J.)