

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

**APPEAL (L) NO.23 OF 2016
IN
NOTICE OF MOTION NO.1843 OF 2016
IN
SUIT NO.2937 OF 2010**

Sandipan Subir Chaudhari & Ors. Appellants
versus
M/s Ugam Solutions Pvt. Ltd. ... Respondent

.....

- Mr.Ajay Kumar a/w Ms.Amrita Agrawal i/b. Mr.Chetan Jaiswal i/b. Prashant Goyal, Advocate for the Applicants/Appellants.
- Mr.Rashmin Khande a/w Ms. Poonam Teddu i/b. Mahesh A. Mahadgut, Advocate for the Respondent.

**CORAM : SMT. VASANTI A. NAIK &
SARANG V. KOTWAL, JJ.
DATE : 20th DECEMBER, 2017.**

P.C. :

Leave is granted to the counsel to file the Vakalatnama in the office within three days.

By this intra-Court appeal, the appellants have challenged the order of the learned Single Judge dated 15/12/2015 recalling the order of dismissal of the suit filed by the respondent for want of prosecution, subject to payment of costs of Rs.50,000/- to the appellants.

It is stated on behalf of the appellants that since the respondent-plaintiff was absent on 3 dates of hearing i.e. 02/12/2014, 05/12/2014 and 08/12/2014, the suit of the respondent was dismissed. It is stated that the respondent was negligent in prosecuting the suit. It

is submitted that the notice of motion filed by the respondent for recalling the order of dismissal of the suit for want of prosecution could not have been casually granted.

On a reading of the affidavit filed by the respondent in support of the prayer made in the notice of motion for recall and setting aside of the order of dismissal of the suit for want of prosecution and the order appealed against, it appears that the learned Single Judge was justified in recalling the order of dismissal of the suit in default. No doubt, the respondent-plaintiff did not appear when the suit was called for hearing on 02/12/2014, 05/12/2014 and 08/12/2014 and hence the suit was dismissed for want of prosecution. However, it appears from the affidavit filed by the respondent in support of the prayer made in the notice of motion for recalling the order of dismissal of the suit that the learned counsel for the respondent-plaintiff was elevated as a Hon'ble Judge of this Court in the year 2014 and though he had asked the respondent-plaintiff to engage a counsel, inadvertently the respondent could not engage a counsel within a reasonable time. Since the counsel for the respondent is elevated as a Hon'ble Judge of this Court, the learned Single Judge made the prayer made in the notice of motion absolute subject to the condition that the respondent-plaintiff pays costs of Rs.50,000/- to the appellants-defendants. The order of the learned Single Judge appears to be just and reasonable.

In this view of the matter, the appeal is liable to be dismissed. Hence, we dismiss the appeal with no order as to costs.

(SARANG V. KOTWAL, J.)

(SMT. VASANTI A. NAIK, J.)