

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 207 OF 2012

IN

SUIT NO. 3053 OF 1997

Mrs. Shanta R. Thawani @ Parwani

...Plaintiff

vs.

Mrs. Bineta Nagpar and others

...Defendants

Mr. Navin Parekh, along with Mr. Sameer Logade, instructed by Mrs. A.S. Malwankar, for the Plaintiff.

None for the Applicants.

None for the Defendants.

CORAM: S.J. KATHAWALLA, J.

DATE : 8th JANUARY, 2016

PC.

The above Notice of Motion is taken out by Defendant No. 3 for self and as Constituted Attorney of Defendant No.2 for setting aside the ex parte decree passed by this Court (Coram: Dr. D.Y. Chandrachud, J.) on 1st July, 2009 in the above Suit and for restoring the suit to file for being tried according to law.

2. Defendant No. 3 as the Constituted Attorney of Defendant No. 2 has mentioned in the affidavit in support of the Notice of Motion that at the time of receipt of summons in the above Suit, he was taking medical treatment. The order and decree sought to be set aside is passed against Defendant No.2.

However, it is not mentioned as to what steps the Defendant No. 2, who is the son of Defendant No.3, took upon receipt of the writ of summons. Defendant No. 3 has stated in the Affidavit in support of the Notice of Motion that an Advocate was engaged to enter appearance and defend the proceedings. The Advocate did not inform Defendant No. 3 about the dates fixed by this Court and upon enquiries being made, the Advocate on all occasions stated that the matter will take time and as and when it will come up, she will inform the same to Defendant Nos. 2 and 3. It is only upon enquiries with the Board Department that on 12th December 2011, Defendant No. 3 came to know that the suit is decreed ex parte. It is stated that the appearance could not be entered “**by reason of non-compliance of information**” by the Advocate in the suit proceedings. The statements made are general in nature and are lacking in particulars. The name of the Advocate is not mentioned/disclosed. No dates are disclosed as to when the Defendant No. 3 approached his Advocate. The Defendant No. 3 has stated in his affidavit that the appearance of the Advocate could not be entered. However, in the order/decreed dated 1st July, 2009, the Learned Judge has recorded that the second and third defendants have not filed their written statement, though they have entered appearance through Advocates during the course of interlocutory proceedings.

2. The above Notice of Motion was called out for hearing on 4th January, 2016, when none appeared for Defendant Nos. 2 and 3. In view thereof, the Notice of Motion is placed today under the caption “for dismissal”. Again today,

none appear for Defendant Nos. 2 and 3. The Notice of Motion is therefore dismissed for want of prosecution.

(S.J. KATHAWALLA, J.)