

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO. 390 OF 2016

IN

SUIT (L) NO. 968 OF 2015

M/s. Monex Enterprises LLP ... Plaintiff

Versus

M/s. Shubh Enterprises & Ors. ... Defendants

Ms. Shweta Sharma i/b. Solicis Lex for the Plaintiff.
None for the Defendants.

CORAM : S.J. KATHAWALLA, J.
DATED : 9th FEBRUARY, 2016

P.C. :

1. The above Suit is filed by the Plaintiff through its Advocate – M/s. Solicis Lex on 16th September, 2015. By the said Suit, the Plaintiff has prayed for possession of the Suit flat from the Defendants and in the alternative sought damages of Rs. 2,50,00,000/-. Despite the Plaintiff being aware that the maximum Court fees of Rs.3 Lacs is payable by the Plaintiff, the Advocate for the Plaintiff in paragraph 27 of the Plaint avoided setting out the value of the Suit, and instead made the following statement :

“27. The Plaintiffs value this Suit for Rs. _____/- and hence has paid requisite Court fees.”

2. On the same day i.e. 16th September, 2015, the Advocate moved the Prothonotary and Senior Master and gave an undertaking to pay the Court fees within a period of two weeks, which undertaking was accepted by the Prothonotary

and Senior Master. The Plaintiff failed to pay any court fees within the period of two weeks and thereby breached the undertaking given to the Prothonotary. However, as set out in my Judgment dated 27th January, 2016 passed in Suit (L) No. 967 of 2013 not only the Prothonotary has no powers to extend time for payment of admitted Court fee by the Plaintiff, as such power vests only with the Court/concerned Judge under Section 149 of the Civil Procedure Code, 1908, the office of the Prothonotary has not worked out any mechanism to confirm whether such an undertaking has been complied with or not. .

3. Thereafter the above Suit came up before the Prothonotary and Senior Master on 15th December, 2015. The Prothonotary and Senior Master perhaps without realizing that an undertaking to pay the court fees within two weeks on 16th September, 2015, has breached the same, passed an order directing the Plaintiff to remove office objections on or before 12th January, 2016 and further ordered that upon the Plaintiff failing to do so, the Suit shall be rejected under OS Rule 986. The suit was thereafter rejected on 12th January, 2016 under OS Rule 986. The Plaintiff failed to pay Court fees until 3rd February, 2016. After paying the court fees on 3rd February, 2016 (in a dismissed suit) the Plaintiffs on 4th Feb. 2016 took out the above Notice of Motion seeking restoration of the Suit. The reason now given is that the Plaintiff was in the process of the arranging money. Even if that was so, the Plaintiff and their Advocates ought to have made an Application under Section 149 of the Code to the Court / concerned Judge and the Court / concerned Judge would thereafter used its/his/her discretion and passed necessary orders. The above conduct of the Plaintiff and their Advocates is therefore strongly deprecated.

However, only since the Advocate for the Plaintiff states that this is the only matter in which they had not paid the admitted Court fees upon filing of the Suit and have breached the undertaking given to the Prothonotary and Senior Master and also since this Court has recently given its decision in Suit (L) No. 967 of 2013 on 27th January, 2016 holding that the Prothonotary and Senior Master has no power to extend time as regards the payment of admitted Court fees, the above Suit is restored to file and placed for directions on 29th February, 2016.

4. The Advocate for the Plaintiff shall remove all office objections on or before 26th February, 2016. .
5. The Notice of Motion is accordingly disposed of.

(S.J.KATHAWALLA, J.)