

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

**NOTICE OF MOTION NO.710 OF 2010
IN
SUMMARY SUIT NO.121 OF 1998**

K.T. Kubal & Co. Pvt. Ltd.Applicant/Org. defendant

IN THE MATTER BETWEEN :

I.C.I.C.I. Ltd.Plaintiff

V/s.

K.T. Kubal & Co. Pvt. Ltd.Defendant

None for the plaintiff.

Mr. Ranjeev Carvalho i/b. S.S. Gawde for the applicant/defendant.

CORAM : K.R.SHRIRAM,J

DATE : 11th AUGUST, 2016

P.C.:-

1 At the outset, the counsel for the applicant seeks leave to amend the prayer clause -(b) of the notice of motion. Leave granted. The amendment to be carried out forthwith.

2 This notice of motion is to recall ex-parte decree passed on 30th June, 2009. This was a summary suit filed by the plaintiff. The defendant was given conditional leave to defend. In compliance with the conditional leave, the defendant has also deposited on 20th June, 2000 the amount as directed by this court though the time granted to deposit was upto 30th June, 2000. The defendant, however, did not file

any written statement and that is how the suit came to be decreed ex-parte on 30th June, 2009 and on that date also nobody was present for the defendant.

3 The counsel for the applicant/defendant tenders an affidavit of service of one Kashinath Bhau Palkar affirmed on 13th July, 2016 confirming service of notice of motion once again upon the plaintiff on 12th July, 2016. Nobody has appeared for the plaintiff nor has any affidavit been filed to oppose the notice of motion.

4 I have considered the reason given in the affidavit in support and I find the reason to be sufficient for recalling the ex-parte decree passed on 30th June, 2009.

5 In the circumstances, the notice of motion is allowed and accordingly disposed of in terms of prayer clauses – (a) and (b). The suit is restored to file.

6 The counsel for the applicant/defendant states that the written statement will be filed and copy served upon the plaintiff on or before 26th August, 2016. The statement is accepted and so ordered.

7 It is made clear that if this written statement is not filed and copy served by 26th August, 2016, the suit will stand decreed without further reference to the court.

8 As the amount involved in the suit is less than Rs.1 crore, the suit be transferred to City Civil Court at Bombay.

(K.R.SHRIRAM,J)