

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

**NOTICE OF MOTION NO. 790 OF 2016
IN
SUIT NO. 942 OF 2011**

M/s. Meeti Developers Pvt. Ltd. .. Plaintiff
Vs.
Vijay Papneja & Anr. .. Defendants

Ms.Reena Salunkhe i/b P.R. Lalchandani for plaintiff/applicant.
Mr.Vinod K. Sharma for defendant no.1.
Mr.A.R.Sheikh i/b R.K. Singh for defendant no.2.

**CORAM : K.R.SHRIRAM, J.
DATE : 15TH OCTOBER, 2016**

P.C.

1 Considered the affidavit in support and the explanations given therein. This notice of motion is taken out for restoration of the suit which was dismissed on 5th January 2016 for want of prosecution. In the affidavit in support, it is stated that the plaintiff took 'No Objection' from the earlier Advocate and wanted to appoint a new Advocate and in the meanwhile, the affiant was unwell and hence failed to appoint a new Advocate. It is also stated that he was unaware that the matter was listed on the date it was dismissed and he was in the process of appointing new Advocate and making necessary arrangements for the same.

2 The counsel for defendant no.2 strongly opposed the notice of motion.

The counsel relied on paragraph 6 of affidavit in reply of defendant no.2 and submitted that the plaintiff took no objection from their earlier advocate on or about 16th February 2015 and when the affiant states that he was unwell and he could not engage another Advocate, he was effectively prosecuting an Appeal filed by the plaintiff challenging the dismissal of another notice of motion in this suit. The counsel also submitted that the Appeal was listed before the Appellate Court on five dates between 2nd March 2015 to 28th April 2015. The counsel also submitted that the affiant has not explained what was his illness and from what date to what date he was unwell. The counsel submitted the plaintiff was making false statements that he was unwell and on this ground alone the the notice of motion should be dismissed. No rejoinder has been filed to the affidavit in reply denying the averments containing therein.

3 I have considered both, the submissions and the affidavit in support and in reply. In the affidavit in support, no specific dates are given. From the affidavit in reply it is obvious that the plaintiff has chosen not to give specific dates because the plaintiff wanted to hide the fact that he was, in fact, prosecuting an Appeal and there is no justifiable reason as to why new Advocate was not appointed and why nobody remained present on 5th January 2016. Between 16th February 2015, the date on which the plaintiff

had taken no objection from its earlier Advocate and dismissal of the suit, almost one year had passed.

4 Normally application of this nature are leniently allowed. But should the Court accept an explanation which is not truthful and far from being sincere. In my view no. In this case, the plaintiff's explanation in the affidavit in support falls in this category. Therefore, this notice of motion should not be allowed. Moreover, the plaintiff is a company and not an individual. Even for a moment, if I accept that the affiant was not well, in the affidavit in reply, there is no explanation as to why the other officials or directors in the company did not take any steps.

5 In the circumstances, the notice of motion dismissed.

(K.R. SHRIRAM, J.)