

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO. 935 OF 2011****IN****SUIT NO. 455 OF 1996**

Sona Tikamdas Manwani

...Plaintiff

vs.

Dr. Ranjit S. Malik

...Defendant

*Mr. Jamshed Ansari for the Plaintiff.**Mr. Prem Gidwani, Advocate, present.***CORAM: S.J. KATHAWALLA, J.****DATE: 7th September, 2016****P.C:**

1. The above Suit was dismissed for default on 29th January, 2004. The above Notice of Motion is taken out by the Plaintiff seven years thereafter for setting aside the order of dismissal and seeking restoration of the Suit. In the Affidavit in Support of the Notice of Motion, the Plaintiff stated that the Suit was filed through Advocate Prem S. Gidwani on 6th February, 1996. After filing of the Suit, the Plaintiff used to enquire with the Advocate 'at material time' regarding the progress of the matter. However, the said Advocate at all times assured her that it is a Long Cause Suit and she would be informed as and when the matter was listed for directions before the Prothonotary and Senior Master. It is further stated that in the meanwhile she shifted to a new place/residence and could not concentrate on the Suit. Her husband too had engaged the same Advocate to defend him in Suit Nos. 1108 of 1994, 1111 of

1994, 1112 of 1994 and 1113 of 1994 . Out of the said Suits, Suit Nos. 1111, 1112 and 1113 of 1994 have been transferred to the category of 'undefended suits' due to the 'negligence of the said Advocate'. The Plaintiff has further stated in her Affidavit that after shifting to the new residence, she did make oral enquiries and sought an update of the matter from her previous Advocate. However, 'all the time' she was assured that as and when the matter was listed, he would inform her and that he will take due care of the matter and she should not worry about the same. After waiting for several years, when she enquired from the Advocate in the first week of November, 2010, the said Advocate was unable to give any satisfactory answer. She therefore checked the status of the present Suit on the Website of the High Court when she came to know that the matter was dismissed for default. When she contacted Advocate Gidwani, he informed her that due to oversight/error he lost track of the matter. She therefore asked for the papers and proceedings in the present Suit and thereafter engaged the present Advocate in the last week of November, 2010, who after taking NOC from the previous Advocate filed his Vakalatnama on or about 27th November, 2010. She has also stated that she cannot be made to suffer on account of the negligence on the part of the Advocate in not taking care of the matter and not attending to the matter.

2. As recorded in my Order dated 18th July, 2016, in the above Notice of Motion, recently the modus operandi of the parties to get the suits which are

dismissed for default, restored to file, is to change the earlier Advocate/s and behind his/their back, squarely blame him/them for the order of dismissal. Since Advocate Prem Gidwani is practising before this Court since the past several years, and is known and observed to be a very conscious and meticulous lawyer, this Court by its Order dated 18th July, 2016, directed that a copy of the Notice of Motion along with the Affidavit in Support filed by the Plaintiff be forthwith forwarded to him, and also asked Advocate Prem Gidwani to appear before this Court on 25th July, 2016 and make his submissions.

3. On 11th August, 2016, Advocate Gidwani appeared before this Court and informed the Court that all the allegations made against him by the Plaintiff are incorrect. He informed the Court that the husband of the Plaintiff, Mr. Tikamdas Manwani, is a law graduate and is himself handling a series of litigation filed both by him and against him and his other family members, and is thus conversant with the procedure of this Court. Due to difference of opinion and for other reasons, he had written a letter dated 31st December, 2002 and also had telephonic conversation with Mr. Tikamdas Manwani, the husband of the Plaintiff, and his brother Mr. Pamanand T. Manwani to collect the record and proceedings of all their matters handled by him. The said letter was sent by registered post and also under certificate of posting. However, the letter sent by Registered Post was returned back. Thereafter by another letter

dated 24th February, 2003, sent both by Registered Post AD and under Certificate of Posting, he once again asked the husband of the Plaintiff to collect all the papers in all their matters from him, which letter is annexed as Exhibit-A Colly. to his Affidavit dated 12th August, 2016. Since none came forward to collect the papers, by another letter dated 7th March, 2003, which was hand delivered, he forwarded all the papers lying with him. The said letter was accepted by one Deepak Manwani who has put his signature on a copy of the said letter and acknowledged the same. Thereafter his no objection was taken in respect of the proceedings.

4. On 23rd November, 2010, the husband of the Plaintiff, Mr. Tikamdas Manwani, once again came to his Office to collect his No Objection on the Vakalatnama. Whilst giving his No Objection, he clearly mentioned therein, *"similar no objection was given by me long ago"*. Mr. Gidwani informed the Court that all these years there was no contact by the Plaintiff or her husband or any other family members with him right from March, 2003 till November, 2010 and thereafter he was surprised to receive a letter dated 19th July, 2016 by the present Advocate along with the copy of the Notice of Motion and the Affidavit in Support thereof making false and wild allegations against him which are devoid of any substance. He stated that he is well known for putting his heart and soul in every matter that he takes up, and this is for the first time in his career of 30 years that the Manwanis have made such allegations against

him knowing the same to be false. This Court therefore requested Mr. Gidwani to place these facts on affidavit which Mr. Gidwani did, by filing his Affidavit dated 12th August, 2016.

5. Though the Plaintiff has on an Affidavit in Support of the Notice of Motion given an impression that she was throughout in contact with Advocate Mr. Gidwani and Mr. Gidwani had regularly stated that he would inform her about the matter when it comes before the Prothonotary and Sr. Master for directions and that she should not worry about the same, on 16th August, 2016, when this Court was informed that it is the husband of the Plaintiff who normally instructs the Advocates on behalf of the Plaintiff, this Court directed the Plaintiff and her husband to remain present in Court on 22nd August, 2016. On 22nd August, 2016, the Plaintiff and her husband were therefore present. The husband of the Plaintiff admitted that he is a law graduate and he is looking after all the suits. When this Court asked the Plaintiff and her husband as to whether they have gone through the Affidavit filed by Mr. Gidwani, and whether it is correct that on the No Objection obtained from Advocate Mr. Gidwani he has made an endorsement, "*similar no objection was given was given by me long ago*", and as to why this fact was not mentioned in the Affidavit in Support of the Notice of Motion, they only stated that they are tendering an apology to the Court and Mr. Gidwani, and are willing to withdraw the allegations made in the Affidavit in Support of the Notice of

Motion. This Court therefore asked them to file an Affidavit in response to Advocate Mr. Gidwani's Affidavit.

6. In the Affidavit filed in response to Advocate Mr. Gidwani's Affidavit, the Plaintiff stated that she never intended to make any allegations against Advocate Gidwani and she tenders her unconditional apology to the previous Advocate and to this Court. She has stated that in June 2003, she had shifted her residence. The papers and proceedings have not been received by her or anyone of her family member. There is no one by name of Deepak Manwani in her family. She had no knowledge of the dismissal of the matter and came to know in November, 2011. Interestingly she states that she had filed her Affidavit in Support of the Notice of Motion 'under the bona fide belief that the previous Advocate was in charge of Suit No. 455 of 1996 as on the date of dismissal in default'. She has stated that she is not pressing any allegations against the previous Advocate and tenders her unconditional apology for the statement, in so far as it is against the previous Advocate. She has stated that three suits which were filed by her husband and transferred to the category of 'undefended suits' have been restored by an Order dated 4th August, 2012, a copy of which is annexed by her in the said Affidavit.

7. Advocate Gidwani has filed his response to the Affidavit filed by the Plaintiff. He has reiterated that the said letter dated 24th March, 2003 along with all the documents were delivered by his Clerk Mr. Rajan Jadhav and from

the information given to him by the said Clerk, he has learnt that the same were accepted by one Mr. Deepak Manwani who was a stout young man and was wearing jeans and a T-shirt and spectacles, and on enquiry by the said Clerk, he was informed that the said Deepak Manwani was a member of the Manwani family. He has further stated that the Manwani brothers were residing in a bungalow at Plot No. 126, Gulmohar Cross Road No. 10, Juhu Scheme, Mumbai-400 049 with their respective families. He has stated that it is pertinent to note that though the Plaintiff has stated that in or about 2003 she shifted her residence, she has not mentioned the date and month of such shifting. He has also stated that he was deeply disturbed after reading the copy of the Order dated 14th August, 2012 from which it appears that serious allegations have been made against him just to have the said suits restored. He has explained as to why vakalatnamas were not filed in Suit Nos. 1111, 1112 and 1113 of 2014, since he had realised that the Plaintiffs in those suits were the family members of one Mr. Chandru Bijlani who was the client of his senior colleague Shri Chhaya and had also appeared for him in some matters. He had informed the Manwani Brothers that he will not be able to appear against Mr. Bijlani as he was known to him and was handling his matters. At the instance of the Manwani Brothers, he was therefore trying to intervene and get the matter settled and it was made clear by him to the Manwani Brothers that he will not be appearing in the matter. Though he arranged meetings with Mr. Bijlani and

the Manwani Brothers, the matter was not settled. Therefore when he was returning the papers where he had filed his Vakalatnama, he also returned the papers in the above Suit. There is no further response from the Plaintiff to this Affidavit of Advocate Mr. Gidwani.

8. From the aforestated facts and the documents annexed by Advocate Gidwani, it becomes clear that the Plaintiff has come to this Court not only with a case which is totally false, but has also tried to shift the blame on Advocate Gidwani, under a false belief that Advocate Gidwani would not come to know about the same, as her husband had earlier succeeded in getting some of the Suits restored, using the same modus operandi. From the letters produced by Advocate Gidwani it appears that right since 2002-2003, he was trying to contact the Manwani Brothers to inform them that he will not be able to appear for them in their matters and that they should take back their papers. When they failed to respond, for whatever reason, Advocate Gidwani by hand delivery forwarded the papers to the Manwanis and has also obtained an acknowledgement from their residence of one Mr. Deepak Manwani who received the papers. The Plaintiff and her husband now merely and unconvincingly state that there was no person by the name of Deepak Manwani in their house. However, the Plaintiff and her husband have lost sight of the fact that Advocate Gidwani has clearly stated in his Affidavit that after receipt of the said letter and papers by Shri Deepak Manwani, the Manwanis obtained his

No Objection in the matters and in fact when they approached him in November, 2010 for a fresh No Objection, he has put an endorsement viz. *"similar no objection was given by me long ago"*. The fact that Mr. Gidwani made such an endorsement on his No Objection in November, 2010 was not only suppressed from this Court by the Plaintiff in the Affidavit in Support of the Notice of Motion filed by her but is not disputed or dealt with by her, in her Affidavit which she has filed in response to the Affidavit of Mr. Gidwani dated 12th August, 2016. This fact clearly establishes that the Plaintiff and her husband were well aware that Mr. Gidwani had returned the papers in the matter after which they had taken his No Objection. However, to their misfortune, Advocate Gidwani recorded that his Vakalatnama was previously taken. The worst is still to come. Mr. Gidwani whilst waiting for the matter to reach requested the Associate to show him the original record, and whilst going through the same, realised and later pointed out to the Court that two weeks before the dismissal of the Suit, the husband of the Plaintiff had himself appeared before the very same Judge who dismissed the matter on a subsequent date and had sought time on the ground that his Advocate is unable to attend the matter. Therefore on that day i.e. 15th January, 2004, the Court passed the following Order:

P.C. The husband of the Plaintiff states that the Advocate appearing for the Plaintiff cannot attend today and prays for time."

However, it appears that the husband of the Plaintiff did not attend the matter thereafter and also did not engage any Advocate because of which the matter was dismissed within two weeks thereafter i.e. on 29th January, 2004. The Order dated 15th January, 2004 therefore completely belies the case of the Plaintiff as made out in the Affidavit in Support of the Notice of Motion seven years after the dismissal of the Suit, and which has been set out extensively and dealt with hereinabove. Moreover, the husband of the Plaintiff was well aware that the Suit was coming up on Board, the same was not being attended to by Advocate Gidwani, since he had already given his No Objection to the Plaintiff/Manwanis, and that the matter would be appearing once again within one week from 15th January, 2004.

9. In the circumstances, restoring the Suit 7 years after the same is being dismissed on grounds which are false, incorrect and dishonest to the knowledge of the Plaintiff and her husband would amount to granting a premium on the dishonesty of the Plaintiff and her husband, which cannot be allowed. The Notice of Motion is thus dismissed with costs.

(S.J. KATHAWALLA,J.)