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

NOTICE OF MOTION NO.1229 OF 2015
IN
SUMMONS FOR JUDGMENT NO.1 OF 2014
IN
SUMMARY SUIT NO.676 OF 2013

Ajay G. Vijayan ….Applicant/Plaintiff

V/s.

All Cargo Global Logistics Ltd. ….Defendant

Mr. Sunny Punamiya a/w. Mr. N.G. Gadre i/b. M/s. L.C. Tolat for the applicant/plaintiff.
Mr. Zal Andhyarujina a/w. Mr. Nirav Barot i/b. Maneksha and Sethna for the defendant.

CORAM : K.R.SHRIRAM,J
DATE : 1st OCTOBER,2016

P.C.:-

1 This notice of motion is taken out for restoring the summons for judgment that came to be dismissed on 15th June, 2015 by vacating the said order.

2 The counsel appearing for the defendant raises a preliminary objection stating that though the notice of motion was taken out more than a year ago, they were served the copy of the notice of motion only day before yesterday, i.e., 29th September, 2016.

3 It should be noted that on 27th January, 2015 when the summons for judgment was listed, the counsel for the plaintiff sought time on the ground that inspite of the advocate's communication, no instructions have been forthcoming from the plaintiff. On 15th June, 2015 the counsel for the plaintiff again made the same statement. The counsel for the plaintiff infact went ahead and stated that the plaintiff was not traceable and when they tried to serve the plaintiff's brother with the application for discharge, service was refused.

4 In Exhibit 'B' to the notice of motion, which is a copy of an order passed by the Additional Prothonotary and Senior Master on the discharge application by the plaintiff's earlier advocates, it is stated that the discharge application was also pasted at the last known address of the plaintiff. But in paragraph 2 of the affidavit in support it is stated that "…… my previous advocates could not contact me and obtained instructions to prosecute the summons for judgment and thereafter applied for chamber order of discharge as advocates for plaintiff."

5 This is totally contrary to what has been stated by the advocate. I would believe what the advocate has stated because even

the chamber order had to be pasted at the plaintiff's door. Therefore, it is quite obvious that the plaintiff was not traceable.

6 Since the plaintiff has made an incorrect statement in the affidavit in support of the notice of motion, the notice of motion stand dismissed.

(K.R.SHRIRAM,J)