

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

SUMMARY SUIT NO.1402 OF 2012

Vasant Chheda

....Plaintiff

V/s.

Manubhai J.Patel

....Defendant

**WITH
COUNTER CLAIM 18 OF 2013**

Mr.Heman Singh i/by Vidhi Partners for plaintiff.

Ms.Simeen Shaikh a/w Ms.Rashmi Patil i/by S.K.Srivastav & Co. for defendant.

**CORAM : K.R.SHRIRAM,J
DATE : 5.8.2016**

P.C.:-

1 This suit is of the year 2012. On 12.6.2015, the plaintiff was directed to file list of witnesses and affidavit in lieu of examination in chief together with compilation of documents and serve a copy thereof upon the defendant on or before 4.7.2015. On 14.7.2015 the counsel for the plaintiff informed the court that the plaintiff is a Medical Practitioner in America and due to prior commitment will not be able to come to India to give evidence for atleast 10 weeks. It was also noticed on that date that the plaintiff despite directions on 12.6.2015 has not even filed his affidavit of documents or given inspection of the documents. The plaintiff was given last chance to file evidence etc. together with compilation upto 31.7.2015 and it was made clear that if the direction was not complied with, the plaintiff's evidence will be

closed. The matter was then stood over to 10.8.2015 for marking of documents and the plaintiff's first witness was directed to remain present in court on that date. On 10.8.2015 the plaintiff's counsel stated that they have filed the evidence and compilation of documents and on the next date if the parties did not settle, the plaintiff will go on with the matter. The matter was stood over to 27.8.2015 at 3.00 P.M. Thereafter the matter did not get listed nor the plaintiff make any application to have the matter heard. The counsel for the plaintiff states that the matter was getting listed on every Tuesday in July. On 2.8.2016 when the matter was again listed, at 3.00 P.M., the counsel mentioned without notice to the defendant that the witness is present in court and his matter be taken up on 3.8.2016. As the court had prior commitments on 3.8.2016, the court placed the matter today for admission/denial of documents and the witness was directed to remain present in court today. The counsel states today that the witness could not stay back and went back to America and he does not know when he will be available next.

2 If the witness was coming to India to give evidence in the matter, it was his duty to inform his advocate in advance and his advocate could have requested the court to keep the matter on a particular date. However, no such application was made in advance. Today the counsel states that even he was informed about the arrival

of the witness in Bombay only on 27.7.2016. Therefore, it is quite obvious that the plaintiff is not keen in prosecuting the suit.

3 Suit dismissed for want of prosecution. Counter claim be listed for directions on 12.8.2016.

(K.R.SHRIRAM,J)