

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

**NOTICE OF MOTION NO. 26 OF 2015
IN
SUIT NO. 1070 OF 2011**

Sudam Balshiram Landge .. Applicant

In the matter between :

Kanaiyalal Balubhai Parekh .. Plaintiff

Vs.

Sampat Ganpat Sathe .. Defendant

And

Sudam Balshiram Landge .. Applicant/Prop. Deft.2

And

Vijay K. Parekh & Anr. .. Respondents

Mr.N.C. Parekh a/w. Mr.N.J. Marjadi and Mr.S.A. Vyas i/b Mansukhlal Hiralal & Co. for plaintiff.

Mr.Sujeet Gopalkrishna Kurup for applicant in NMS/26/2015.

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

P.C.

1 Shri Kurup, counsel appearing for the applicant states that he has filed Vakalatnama in the last week and he wishes to file an additional affidavit on behalf of the applicant.

2 The relief as sought in the notice of motion is to recall an ex-parte decree dated 5th March 2014 passed in this suit in favour of the plaintiff. The

applicant is not even a party to the suit. Therefore, the ex-parte decree, in any event, will not be binding upon the applicant.

3 In the circumstances, I see no reason to grant any further time to file any additional affidavit because, the applicant not being a party to the suit, is not entitled to make this application.

4 Shri Kurup states that the plaintiff in this suit has filed another suit against the applicant for setting aside the Conveyance between the applicant and the defendants and the plaintiff is relying upon this decree in this suit to challenge the Conveyance.

5 Be that as it may, still the applicant has no locus to ask for setting aside the ex-parte decree in a suit to which he was not a party. At the same time, it will be open for the applicant to raise all defences in the suit filed by the plaintiff against the applicant.

6 The notice of motion accordingly stands dismissed.

(K.R. SHRIRAM, J.)