

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 143 OF 2016
IN
NOTICE OF MOTION NO.48 OF 2012
IN
SUIT NO.77 OF 2009

Shri Madhavlal Narayanlal Pittie & Others. .. Appellants
Vs
Bachharaj & Company Private Limited & Ors. .. Respondents
—

Shri Navroz Sirvai, Senior Counsel along with Ms. Pradeep Mang and Shri Varun Satiya i/b Crawford Bayley & Co for the Appellants.

Shri Rahul Narichania, Senior Counsel along with Shri Sharan Jagtiani and Shri S.V. Mehta i/b Malvi Ranchoddas & Co for the Respondent Nos.1, 3, 4 and 6.

Shri Vishesh Malviya along with Ms. Anuja Abhyankar i/b M/s. Federal & Rashmikant for the Respondent No.2.

Ms. Nisha Shah i/b Shri Kalpesh Joshi for the Respondent No.5.

Shri A. Shukla along with Shri Dharmesh Pandya i/b Ashwin Pandya & Associates for the Respondent No.7.
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CORAM : A.S. OKA & G.S.KULKARNI, JJ
DATED : 8TH MARCH 2016

P.C.

1. When the Appeal is called out for admission, the learned counsel appearing for the first, third, fourth and sixth Respondents on instructions stated that the said Respondents desire to move the learned Single Judge for expeditious hearing of the Notice of Motion No.305 of 2009 in Suit No.77 of 2009. He stated that by granting liberty to move the learned Single Judge for expeditious hearing of the said Notice of

Motion, the impugned order dated 28th October 2015 be set aside and all contentions of the parties on merits be kept open.

2. The learned counsel appearing for the Appellants on instructions stated that if the said Respondents move the learned Single Judge for expeditious hearing of the Notice of Motion No.305 of 2009 in Suit No.77 of 2009, the Appellants would consent to that prayer.

3. In view of the aforesaid statements, we dispose of the Appeal by passing the following order.

ORDER:

- (a) The order dated 28th October 2015 passed in the Notice of Motion No.48 of 2012 in Suit No.77 of 2008 is set aside by consent of the parties. The Notice of Motion No.48 of 2012 accordingly stands disposed of. However, no adjudication is made on the rival contentions raised by the parties in the said Notice of Motion;
- (b) It will be open for the first, third, fourth and sixth Respondents to move the learned Single Judge for

expeditious hearing of the Notice of Motion No.305 of 2009 in Suit No.77 of 2009;

- (c) The Appellants have no objection for taking up the hearing of the said Notice of Motion on priority basis;
- (d) We are sure that if an Application is made by the first, third, fourth and sixth Respondents before the learned Single Judge, necessary priority will be given to the hearing of the said Notice of Motion depending upon the pendency of old cases assigned to the learned Single Judge;
- (e) All contentions on merits of the Notice of Motion No.305 of 2009 in Suit No.77 of 2009 are expressly kept open;
- (f) Needless to add that priority will be given to the hearing of the Chamber Summons No.333 of 2015 which is taken out for amendment of the said Notice of Motion;

(g) The Appeal is disposed of on above terms;

(h) The Notice of Motion (L) No.3109 of 2015 is accordingly disposed of.

(G.S. KULKARNI, J)

(A.S. OKA, J)