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

NOTICE OF MOTION NO. 560 OF 2016
IN
SUMMARY SUIT NO. 1014 OF 2005
WITH
CHAMBER SUMMONS NO. 330 OF 2017
WITH
NOTICE OF MOTION NO. 560 OF 2016
IN
SUMMARY SUIT NO. 1014 OF 2005

The B.E.S.T. Undertaking (of the Bombay
Municipal Corporation) ...Applicant/Plaintiff
vs
Uttar Pradesh Co-op.Spinning Mills.
Federation Ltd. & Ors. ...Defendants

.....
Mr Arsh Misra i/b M.V.Kini & Co. for the Applicant/Plaintiff
Ms Jaishree Surati i/b S. Ashwinikumar & Co. for Defendant
No.1.
Mr. Kalpesh J. Nansi for Defendant No.3.
Mr Shlok Parekh a/w Mr Rachit Thacker i/b Rustamji & Ginwala
for Defendant No.4.

.....
CORAM : **B.P.COLABAWALLA, J.**
NOVEMBER 8, 2017.

P.C.:

This Notice of Motion has been filed to set aside the
order dated 19th June, 2014, by which the above Summary Suit
was dismissed. The prayer is also made to restore the present

Summary Suit on the file.

2 On going through the order dated 19th June, 2014, I find that the same was passed in presence of the advocates for the Plaintiff. These very advocates are also appearing before me today. In the order dated 19th June, 2014, another Single Judge of this Court (S. J. Kathawalla, J.) recorded that admittedly the Writ of Summons in the suit was not served on the Defendants for the last nine years. The reason given is that some Writ Petition involving the same issue was pending. This explanation was found to be wholly misconceived by the Court. The Court recorded that the Plaintiff had several suits/ cases pending before various Courts and that the Plaintiff and their Advocates were well aware that once a Suit is filed the plaintiff is bound to serve the Writ of Summons on the Defendants as provided under the Code of Civil Procedure, 1908 (“CPC”). Considering that there was an inordinate delay in serving the Writ of Summons on the Defendants, the suit was dismissed for want of prosecution. To set aside this order the present Notice of Motion is filed.

3 Now in this Notice of Motion the explanation that is sought to be given is that on 17th June, 2014 the above matter was listed for the first time for directions, after so many years and the Advocate for the Plaintiff appeared and took time to seek instructions whether the Writ of Summons was served on the Defendants. It was only on 19th June, 2014 that the Plaintiff's advocates realized the service of the Writ of Summons was not effected on the Defendants. It has been stated in the affidavit that the Plaintiff was diligent in respect of all procedural aspects in all other Summary Suits as well as some other Writ Petitions and it was only in this solitary case that both, the Advocates and the Plaintiff, lost sight of the procedural formalities.

4 Firstly, considering that the Plaintiff had appeared before this Court on 19th June, 2014, and the Court was not impressed with the reason given for the inordinate delay in service of the Writ of Summons, this suit came to be dismissed. I do not find that the Plaintiff can now file a fresh Motion to set aside the earlier order by giving fresh reasons. Even otherwise, on going through the affidavit in support, I do not find that there

is any plausible reason given why the Writ of Summons has not been served on the Defendants for a period of nine years from the date of filing of the suit. Merely because the Plaintiff is an Electricity arm of the B.M.C. does not give them any special latitude for not serving the Writ of Summons on the Defendants as prescribed by Law. The Law applies equally to all, be it an individual or a Public Sector Undertaking. In this view of the matter, I find that this Notice of Motion is wholly devoid of merit and the same is dismissed. No order as to costs.

5 In view of the order passed in the Notice of Motion, nothing survives in the Chamber Summons and the same is disposed of accordingly.

(B. P. COLABAWALLA, J.)