

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
APPEAL NO. 49 OF 2017
IN
NOTICE OF MOTION NO.456 OF 2015
IN
SUIT NO.1967 OF 2009**

Madhu S. Gupta	..Appellant
Vs.	
V. R. Pictures & Ors	..Respondents

**WITH
NOTICE OF MOTION NO.364 OF 2017
IN
APPEAL NO.49 OF 2017**

Madhu S Gupta	..Applicant
Vs.	
V. R. Pictures & Ors	..Respondents

Mr. Karl Tamboly a/w Mr. Kunal Mehta for the Appellant / Applicant
Mr. Nagendra Dube for the Respondent Nos.2 to 4

**CORAM :R. M. SAVANT, &
SARANG V KOTWAL, JJ
DATE : 10th NOVEMBER, 2017**

P.C.

1 The order dated 2-12-2016 passed by a Learned Single Judge of this Court allowing the Notice of Motion No.456 of 2015 which was filed for recalling the exparte decree passed against the Respondents i.e. the original Defendants on 7-3-2014 is taken exception to by way of the above Appeal. The principal ground on which the order is challenged is that without considering the aspect of delay, that the said Notice of Motion has been allowed. The Learned Counsel appearing for the Respondents i.e. the original

Defendants Mr. Dube on instructions states that he has no objection if the impugned order dated 21-12-2016 is set aside, the above Notice of Motion is restored to file and relegated to the Learned Single Judge for a denovo hearing. Statement accepted. The Learned Counsel appearing for the Appellant Mr. Tamboly has no objection to the said course of action being followed. In view of the said statement, the above Appeal is allowed and the following directions are issued:

i) The impugned order dated 21-8-2016 stands set aside in view of the statement made by the Learned Counsel for the Respondents i.e. the original Defendants.

(ii) The Notice of Motion No.456 of 2015 is relegated back to the Learned Single Judge for a denovo hearing. The Learned Single Judge is requested to hear and decide the said Notice of Motion latest by 22-12-2017.

(iii) All contentions of the parties are expressly kept open for being urged before the Learned Single Judge.

(iv) The Learned Counsel for the Appellant makes a statement that till the disposal of the said Notice of Motion, the Plaintiff i.e. the Appellant herein would not precipitate the matter on the basis of the decree in question.

2 The above Appeal is accordingly disposed of.

3 In view of the disposal of the above Appeal, the above Notice of Motion No. 364 of 2017 does not survive and to accordingly stand disposed of as such.

[SARANG V KOTWAL, J]

[R.M.SAVANT, J]