

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION (L) NO.306 OF 2017
IN
SUIT NO.1268 OF 2011**

Rajnikant Jayantilal Sheth & Ors.Applicants/Org. Defendants

IN THE MATTER BETWEEN :

Shirish Jayantilal Sheth and Anr.Plaintiffs

Vs.

Rajnikant Jayantilal Sheth and Ors.Defendants

Mr. Ashish Kamat i/b. Mr. Munir Merchant for the plaintiffs.

Mr. Amol Wagh i/b. Mr. Sagar Kasar for the defendant nos.1 and 2/applicants.

CORAM : K.R.SHRIRAM, J.

DATE : 13th FEBRUARY, 2017

P.C.:

1 This notice of motion is taken out by the defendants to condone the delay of 3 years 20 days in filing the notice of motion, set aside the order dated 29th October, 2013 passed by the Prothonotary and Senior Master and direct the office to take the applicant's written statement on record.

2 On 29th October, 2013 the Prothonotary and Senior Master had passed an order which reads as under :

“When matter appeared on my board on last occasion defendant nos.1 and 2 was served by way of substituted service. Publication was made on 29-07-2013 and defendant nos.1 and 2 were directed to file written statement on or before today, by making it clear that if no written statement is file suit against defendant nos.1 and 2 will be transferred to the list of undefended suits. Despite that neither defendant nos.1 and 2

remain present today nor filed written statement. Suit against defendant nos.1 and 2 is transferred to the list of undefended suits.”

3 The suit has been listed before this court on quite a few occasions. On 2nd February, 2017 when the notice of motion taken out by the plaintiffs was disposed even at that stage the defendants did not remain present. Curiously the affidavit in support of this notice of motion is affirmed on 11th December, 2015 but the notice of motion has been lodged only on 8th February, 2017 after the order dated 2nd February, 2017 was passed. It is quite obvious that the attempt of the defendants is only to drag on the matter. In this case, the flat which is the subject matter of the suit has been locked by the defendants and the keys are kept with the defendants so that the plaintiffs are unable to use the said flat. This being the conduct of the defendants, Mr. Kamat, counsel for the plaintiffs states that even if the court is inclined to allow the notice of motion, substantial cost should be imposed on the defendants. Mr. Kamat is justified.

4 When I ask the counsel for the defendants as to why the affidavit in support of this notice of motion has been affirmed on 11th December, 2015 and as stated by the counsel, the written statement has also been declared on 11th December, 2015 why this notice of motion was not taken earlier to which the counsel for the defendants states that he has not receiving instructions from the defendants.

5 In view of the dilatory tactics adopted by the defendants, in my view, the defendants should be saddled with cost. Therefore, each of the defendants to pay a sum of Rs.25,000/- as cost to the plaintiffs by way of cheque drawn in favour of the advocate on record for the plaintiffs and another amount of Rs.25,000/- as donation to Tata Memorial Hospital. These amounts to be paid within two weeks from today.

6 Mr. Wagh, counsel for the defendants states that the written statement will be filed in the registry during the course of today. The registry to accept the written statement and take the same on record subject to removal of office objections and after being satisfied that the amounts as mentioned above have been paid within the time prescribed by this court. The defendants are put to notice that if these amounts are not paid within two weeks period, the court may direct the registry to discard the written statement.

7 The notice of motion accordingly stands disposed. Notwithstanding disposal of the notice of motion, the applicant to remove all office objections and get the notice of motion numbered within two weeks from today.

(K.R. SHRIRAM, J.)