

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

**CIVIL APPEAL NO.265 OF 2017
IN
NOTICE OF MOTION (L) NO.183 OF 2017
IN
NOTICE OF MOTION NO.3584 OF 2010
IN
SUIT NO.2576 OF 2001**

Vineet Sethi alias Voneat Sethi & Anr. Appellants

versus

Precision Metal Products Pvt Ltd. (Regd) ... Respondent

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- Mr.P.M. Havnur a/w Ms.Radhika Samant i/b. Mr.Datta Mane, Advocate for the Appellant/Applicant.
- None for the Respondent.

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

P.C. :

1. The above Appeal takes exception to the order dated 15/02/2017 passed by a learned Single Judge of this Court, by which order the Notice of Motion being lodging No.183/17 was dismissed. The said motion was filed for setting aside the order

dated 28/03/2012 passed in Notice of Motion No.3584/10. The Appellants herein were the Defendants in the above Summary Suit being No.2576/10. The said Summary Suit came to be decreed ex parte on 05/09/2006 as the Defendants inspite of service, did not appear in the said suit.

2. The Appellants herein i.e. the Defendant in the suit, four years thereafter, had filed Notice of Motion No.3584/10 for setting aside the said ex parte decree. The said Notice of Motion came to be dismissed by the learned Single Judge on the ground that though a period of 14 months had elapsed since filing of the Notice of Motion, the same was not served on the plaintiffs. The learned Judge has also taken into consideration the fact that the said Notice of Motion was filed four year after the ex parte decree. The instant motion i.e. the Notice of Motion No.183/17 has been filed four years after the said Notice of Motion came to be dismissed. As indicated above, the instant Notice of Motion has been filed for setting aside the order dated 28/03/2012 passed in the said Notice of Motion No.3584/10.

3. The facts as aforestated indicate the manner in which the Defendants have been prosecuting the proceedings. In view thereof, no indulgence can be shown to the Defendants. Hence, there is no merit in the above Appeal. The same to accordingly stand dismissed.

4. In view of the dismissal of the Appeal, the Notice of Motion No.1306/17 does not survive and to accordingly stand disposed of as such.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)