

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***T. & I. J.*****NOTICE OF MOTION NO. 61 OF 2015****IN****SUIT NO. 23 OF 1993****IN****PETITION NO. 435 OF 1991****Rajendra Kanaiyalal Vora & Anr.****..... Applicants
(Org.Plaintiffs)****IN THE MATTER OF****Rajendra Kanaiyalal Vora & Anr.****..... Plaintiffs****VERSUS****Smt.Prithvidevi Murlidhaji Thakur****..... Defendant**

Mr.Bharat Vaishnawa, i/b. N.N.Vaishnawa & Co. for the Applicants/Plaintiffs.

Mr.Vasant Dhawan for the Defendants.

CORAM : R.D. DHANUKA, J.**DATE : 17th JULY, 2017****P.C.**

Learned counsel for the defendants opposes this notice of motion on the ground that the plaintiffs were absent on number of occasions. He however submits that if this court comes to the conclusion that the order passed by this court on 22nd July, 2014 deserves to be recalled, the plaintiffs be directed to pay the cost which was required to be paid by his client to the learned Court Commissioner.

2. Mr.Vaishnawa, learned counsel for the plaintiffs agrees to pay the cost of Rs.7,500/- to the defendants within two weeks from today. He also undertakes

before this court that his client whose affidavit in lieu of examination in chief is already filed will remain present before the learned Court Commissioner for the purpose of cross-examination and will not ask for any unnecessary adjournment. Undertaking is accepted.

3. By consent of parties Mrs.A.Rodrigues, advocate is appointed as a Court Commissioner for recording evidence of the parties proposed to be examined in this matter.

4. Both the parties are directed to bear the fees and expenses of the learned Court Commissioner equally at the first instance.

5. The plaintiffs are directed to file list of the witnesses proposed to be examined within two weeks from today and shall serve a copy thereof upon the defendants' advocate simultaneously. The learned Court Commissioner is requested to submit interim report insofar evidence of PW-1 is concerned on or before 31st August, 2017. It is made clear that if the witness of the plaintiffs is absent on any date fixed by the learned Court Commissioner, the fees of the learned Court Commissioner will have to be borne exclusively by the plaintiffs. The learned Court Commissioner shall not grant any unnecessary adjournment to any of the party.

6. Order dated 22nd July, 2014 is recalled in the aforesaid terms. Notice of motion is disposed of in the aforesaid terms.

7. Place the suit on board on **4th September, 2017** for directions.

(R.D.DHANUKA, J.)