

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1783 OF 2016
IN
CONTEMPT PETITION NO. 55 OF 2008
IN
SUIT NO. 2470 OF 1994
WITH
SHOW CAUSE NOTICE NO. 192 OF 2009

Divyakant Ranjitsinh Khatau ...Plaintiff

Versus

Hiten Abhay Khatau & Anr ...Defendants

Mr Mehul Shah, for the Applicant/Plaintiff.

**Dr Birendra Saraf, with Ranjeev Carvalho, i/b NN Amin & Co, for
Defendant No. 1.**

**Mr JP Sen, Senior Advocate, with Vishal Kanade & Vishesh
Malviya, i/b M/s Federal & Rashmikan, for Defendant No. 2.**

CORAM: G.S. PATEL, J
DATED: 7th March 2017

PC:-

1. I will have to allow this Notice of Motion. It is for restoration of the Contempt Petition that was dismissed on 10th June 2016 for default, i.e., on account of the absence of the Petitioner/Applicant.

2. The Affidavit in Support of this Notice of Motion and its annexures make it clear that on that date, 10th June 2016, although the Petition was shown on board, the Suit itself was not shown. The appearance of Mr Mehul Shah who filed his vakalatnama for the Applicant was not shown. A copy of the board listing is annexed to the Affidavit in Support. The matter was shown at Serial No. 37. Mr Shah's appearance was not shown on the board. It appears that this probable escaped the attention of all.

3. Mr Sen submits that there is, or was, a view that a Contempt Petition once dismissed cannot be restored. In the facts of this case, I do not believe that can apply. The dismissal was for non-appearance of the Petitioners' Advocate, and that was because of an error in providing the complete information on the daily list for that day. This is an error on the part of the registry or the board department. The Petitioner and his Advocate can hardly be held responsible for that.

4. The order dated 10th June 2016 is recalled and set aside. Contempt Petition No. 55 of 2006 is restored to file.

5. A show-cause notice was issued on the Contempt Petition. By the order of 10th June 2016 it was discharged. Dr Saraf for Respondent No. 1 correctly points out that the restoration of the Contempt Petition cannot in law operate to restore the show-cause notice. The Contempt Petition will have to be taken up for admission again.

6. List the Contempt Petition on 29th March 2017 for admission.

7. The Notice of Motion is disposed of in these terms with no order as to costs.

(G. S. PATEL, J.)