

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.243 OF 2016

IN

SUMMARY SUIT NO.147 OF 2014

Mr Rajeev Ahuja, Proprietor of
M/s M.S. Engineers ... Applicant
and

Lafarge Aggregates and Concrete India
Pvt.Ltd. ... Plaintiff

v/s

Mr Rajeev Ahuja, Proprietor of
M/s M.S. Engineers ... Defendant

Mr Shadab S. Jan i/b M/s Manilal Khwer Ambalal and Co. for
Plaintiff.

Mr Kamlesh Dayma i/b M/s Bekay Legal for Defendant.

CORAM : B.P. COLABAWALLA, J.

DATE : NOVEMBER 1, 2017

P.C.:

1. This Notice of Motion has been filed seeking leave of this
Court to allow the Defendant to file its appearance in the above
Summary Suit.

2. On going through the affidavit in support of the Notice of

Motion, I find that there is a far greater delay in filing this Notice of Motion than what has been mentioned in prayer clause (a) thereof. The writ of summons was served as far back as on 24th March 2014 and an affidavit to that effect has been filed by the Bailiff and Clerk of the Sheriff of Mumbai dated 7th April 2014. It is the case of the Defendant that the signature appearing on the acknowledgment card is not his signature and he happened to realize that this matter is pending against him as he was casually browsing through the website of this Court. When I showed my disinclination to accept the contentions of the Defendant, the learned counsel appearing for the Defendant submitted that this Notice of Motion may be allowed by imposing heavy costs so that the Defendant be given one last opportunity to defend the present Summary Suit. He stated that the Defendant is willing to pay costs of Rs.75,000/- for the inconvenience caused to the Plaintiff.

3. Considering that the Defendant has himself come forward and is willing to pay costs of Rs.75,000/- and to ensure that one last opportunity be given to the Defendant to contest the Suit on merits, Notice of Motion is allowed in terms of prayer clauses (a) and (b)

subject to payment of costs of Rs.75,000/- to the Plaintiff. To ensure that the Defendant does not raise any grievance with reference to the service of the plaint, the Plaintiff is directed to serve a copy of the plaint on the Defendant within a period of two weeks from today. After the appearance is filed on behalf of the Defendant, it shall be open to the Plaintiff to file a Summons for Judgment as contemplated under Order XXXVII of the C.P.C. 1908 within a period of two weeks from today.

4. It is clarified that if the costs of Rs.75,000/- are not paid to the Plaintiff within a period of one week from today, this Notice of Motion shall stand automatically dismissed without further reference to the Court. Notice of Motion is disposed off in the aforesaid terms.

(B.P. COLABAWALLA, J.)