

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

**NOTICE OF MOTION NO.2 OF 2016  
IN  
SUIT NO.4162 OF 1995**

Smita Rajeev Sah )....Applicant

**IN THE MATTER BETWEEN :**

Roop Narain Sah & Anr. )....Plaintiffs

V/s.

Smita Sah & Anr. )....Defendants

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Mr.Rohan Karande i/by M/s.Divekar & Co. for plaintiffs.

Mr.U.J.Makhija a/w Ms.Anita Khanna i/by M/s.Legasis Partners for  
defendant nos.1 & 2.

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**CORAM : K.R.SHRIRAM,J  
DATE : 7.8.2017**

**P.C.:-**

1 Heard the counsel. Considered the affidavit in support, affidavit in reply and also the report of the commissioner. The indisputable fact is that last time PW-1 made himself available for cross-examination was on 13.8.2014. Thereafter commissioner has addressed quite a few communications fixing the dates but the witness does not remain present on one or the other ground. In the affidavit in reply it is not denied that last evidence was recorded in August-2014 but according to the plaintiffs, the defendants have already asked many questions and they are prolonging the matter. It is also stated that the witness, due to his age has not been able to

confirm the dates on which he will be available for cross-examination. Matter cannot go on like in this fashion. It should also be noted that examination in chief is filed on 16.3.2012 and taken on record on 11.6.2012 and the suit is of the year 1995. Therefore, the matter cannot go on indefinitely.

2           Therefore, evidence of PW-1 is closed. Counsel for the plaintiffs is unable to answer whether they are having any other witness.

3           Therefore, stand over to 9.8.2017 for directions.

4           Notice of Motion disposed accordingly.

**(K.R.SHRIRAM,J)**