

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

**NOTICE OF MOTION NO.2159 OF 2009
IN
SUIT NO.7044 OF 1999**

Yogesh Mehta)....Plaintiff
V/s.

The Stock Exchange, Mumbai & Ors.)....Defendants/Applicants

Ms.Sonal a/w Mr.Ankit Tripathi, Mr.Filji Frederick and Mr.Subham Mittal I/by FF and Associates for plaintiff.

Mr.Pesi Modi, senior Advocate a/w Mr.Nihar Mody and Mr.Arnav Mohanty I/by Wadia Ghandy and Co. for defendants/applicants..

CORAM : K.R.SHRIRAM,J

DATE : 9.10.2018

P.C.:-

1. This Notice of Motion is taken out to direct plaintiff to furnish security for the payment of all costs incurred and likely to be incurred by defendant nos.1 to 11 in defending this suit and the amount indicated is about Rs.50 lakhs. This application is taken out under Order 25 of the Code of Civil Procedure 1908.

2. The reason why this application has been taken out can be found in paragraph-2 of the affidavit in support which reads as under :-

“The Exchange has moved the present Notice of Motion for and on behalf of itself and Defendant Nos.2 to 11 who were members of the Exchange's Governing Board at the relevant time. The Exchange has moved the present Notice of Motion as Defendant Nos.1 to 11 have reason to believe that it will be difficult if not impossible to realize the costs of the said proceedings, from the plaintiff if and when ordered by this Hon'ble Court, as the plaintiff does not have sufficient funds or assets to pay Defendant Nos.1 to 11 the same. In this regard it is pertinent to note that the plaintiff was declared to be a defaulter on 10th December 1996 since he failed to meet his financial obligations on the Exchange, and the present suit is in respect thereof.”

3. Therefore, the applicant, because the plaintiff was declared as a defaulter and his membership was terminated states that the plaintiff does not have sufficient funds or assets to pay cost to defendant nos.1 to 11 should the applicant succeed in this suit.

4. Mr.Mody at the outset stated that there is no basis as to how figure of Rs.50 lakhs has arrived at. In any event, defendant should have taken out this application promptly after the suit is filed, the suit has been filed in 1999 whereas Notice of Motion is taken out in 2009, 10 years later. I find nothing in the affidavit in support as to why after 10 years, applicant felt it necessary to take out this Notice of Motion, particularly when the termination of membership happened even before the suit was filed. For any interim relief promptitude is one of the basic criteria.

5. Notice of Motion dismissed. At the same time, if defendants succeed, defendants are at liberty to apply to the court for substantial costs and that can be considered at that time.

(K.R.SHRIRAM,J)