

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1323 OF 2016
IN
SUIT NO. 1653 OF 1977

Edith Peter Misquitta & Anr	...Plaintiffs
<i>Versus</i>	
Heather D'mello & Ors	...Defendants

Ms Anita Castilino, i/b SM Kazi, for the Plaintiffs.
Mr Deepak Chitnis, with Sonali Dalvi, Jinal Rath & Aditi Yadav,
i/b M/s. Deepak Chitnis Chiparika & Co., for Defendants Nos.
3(a), 3(b), 3(c), 3(d), 5, 6, 7 & 9.

CORAM: G.S. PATEL, J
DATED: 8th January 2019

PC:-

1. The Motion seeks to set aside an *ex parte* decree dated 2nd April 2012 at least as regards Defendants Nos. 5, 6 and 8 and also possibly Defendant No. 14. The order of 2nd April 2012 failed to note that the Written Statements have in fact been filed by Defendants Nos. 5, 6, 8 and 14. The decree cannot be sustained against those Defendants. Defendant No. 8 has passed away.

2. The present application by Mr Chitnis is on behalf of several Defendants, including Defendants Nos. 5 and 6, but not 14. Nonetheless I do not see how *ex parte* decree can be sustained against Defendant No. 14 either.

3. The *ex parte* decree is set aside to the extent that it is against Defendants Nos. 5 , 6 (original Defendant No. 8) and 14. These Defendants have filed Written Statements.

4. List the suit for framing issues as between the Plaintiffs and Defendants Nos. 5, 6 and 14 on 23rd January 2019.

5. The Notice of Motion is disposed of in these terms. There will be no order as to costs.

(G. S. PATEL, J)