

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1608 OF 2011
IN
SUIT NO. 1184 OF 2011
(COMIP NO. 27 OF 2011)
WITH
NOTICE OF MOTION (L) NO. 1964 OF 2014

Sumeet Appliances Pvt Ltd	...Plaintiff
<i>Versus</i>	
Dilip Kumar Jain & Sumeet Engineering Works	...Defendants

Ms Aditi Phatak, i/b Udwadia & Co., for the Plaintiff/Applicant.
Dr B Saraf, with Megha Chandra, Hemang E & Karishma T., i/b
Gordhandas & Fozdar, for the Defendants.

CORAM: G.S. PATEL, J
DATED: 13th February 2019

PC:-

1. Yesterday, I disposed of Review Petition No. 29 of 2016. This is one that I had admitted earlier, issuing Rule on 12th August 2016. That Review was directed against my order dated 28th October 2015. This order was a final judgment in the Notice of Motion No. 1608 of 2011 and the Notice of Motion (L) No. 1964 of 2014 in the Suit No. 1184 of 2011. The Plaintiff in that suit was Sumeet Appliances Pvt Ltd (“**Sumeet Appliances**”).

2. I do not propose to repeat or even reproduce the contents of my order passed yesterday, i.e., 12th February 2019, on the Review Petition. It is sufficient to say that I allowed it fully, recalled my order dated 28th October 2015 and restored Sumeet Appliance's Notice of Motion No. 1608 of 2011 and Notice of Motion (L) No. 1964 of 2014 to file. I directed that the parties to those Notices of Motion would be heard today afresh along with a companion Notice of Motion No. 275 of 2017 in Commercial Suit No. 310 of 2017 filed by one Sumeet Research and Holdings Pvt Ltd ("**Sumeet Research**"). Both Sumeet entities are arrayed in their respective proceedings against the same Defendant, one Dilip Kumar Jain and his proprietorship firm (collectively, "**Jain**").

3. When the Review Petition was called yesterday, Ms Phatak on behalf of Sumeet Appliances sought time saying that there were no instructions. I declined an adjournment. The matter had been adjourned for much too long already. I said I would take it up at 3.00 pm. When I did, and it was called out in the afternoon session, Mr Rebello, learned Counsel instructed by Udwadia & Co., (a firm represented in Court today by Ms Phatak and Mr Parag Sharma) opposed the Review Petition.

4. Following the directions I issued while disposing of the Review Petition, Sumeet Appliance's Notices of Motion are listed today for hearing and final disposal. Ms Phatak now states that M/s. Udwadia & Co propose to take a discharge. Somewhat surprised by this, I have asked why and how this has come to pass since Udwadia & Co. apparently did have instructions to oppose the Review Petition only yesterday. She informs me that when M/s. Udwadia &

Co. communicated on phone with Sumeet Appliances in the morning session yesterday that the Review Petition was not being adjourned, and would be taken up at 3:00 pm, they received an email communication from Sumeet Appliance's Ajay Mathur (email dated 12th February 2019, 12:07 pm) that they should appear and should engage Mr Rebello "for the arguments today", i.e., yesterday 12th February 2019. The instructions were to oppose the Petition.

5. Ms Phatak states that thereafter, i.e., later in the evening on 12th February 2019 she herself emailed Ajay Mathur at Sumeet Appliances (email dated 12th February 2019, 9:53 pm) saying it would not be possible (for various reasons that are between M/s. Udwadia & Co. and Sumeet Appliances) to continue to represent them in the matter, and if they had appeared at the Review Petition hearing, it was a gesture of goodwill and not an assurance of continued representation.

6. In response (email dated 12th February 2019, 10:33 pm), Ajay Mathur wrote to M/s Udwadia & Co's Mr Parag Sharma (Ms Phatak's colleague) giving some assurances of the matter between the firm and Mathur, and saying that he (Mathur) left it to Mr Sharma's best judgment in view of Mathur's and Sumeet Appliance's "situation", with a request to arrange for counsel to appear today.

7. Mr Sharma replied a few minutes later (12 February 2019, 10:48 pm). He clarified that assurances were no longer enough; that the previous day's appearance was no more than a courtesy and a

gesture of goodwill; that Mathur had confirmed on the telephone that he could not resolve the pending issue; and specifically informing Mathur that neither M/s Udwadia & Co nor counsel would appear on his and Sumeet Appliance's behalf at today's hearings. Mr Sharma went a step further, saying that if Mathur wanted to go ahead, he had to resolve the pending and long-standing issue by 10:00 am today; which I understand to mean that had the issue been resolved by that time, M/s Udwadia & Co would have appeared at the hearing this afternoon of the two Sumeet Appliance Notices of Motion.

8. There is a response to this from Mathur (12 February 2019, 11:03 pm), only saying 'noted' and assuring a resolution of the *inter se* issues 'regardless of the outcome in court on 13/2'.

9. I am not in the least concerned with the issue between M/s Udwadia & Co and Mathur/Sumeet Appliances. The only point to be noted is that M/s Udwadia & Co have made their position clear to their clients of their inability to continue in the matter. They have not simply abandoned ship. To the contrary: they have specifically offered to continue provided the pending issue between them and Mathur/Sumeet Appliances is resolved first thing this morning. Mathur has seen and noted this. He has not, however, acted on that message, and as of this afternoon, M/s Udwadia & Co have no resolution of the and issue.

10. It should be fairly clear what that issue is, and it is impossible in these circumstances to fault in the slightest M/s Udwadia & Co's

approach. There is no governing standard or principle in this profession that compels an attorney, having once filed a vakalatnama, to continue indefinitely regardless of the circumstances. We use the word 'instructions' somewhat elliptically, as a matter of courtesy and perhaps even courtesy or civility, but that should not distract us from what is at play. M/s Udwadia & Co cannot be expected to take on the burden of litigation costs including counsel fees. The firm has already done what few, if any, do, i.e. to offer Mathur an opportunity of resolving the issue between them on the very day of the hearing. If Mathur, for whatever reason, has not or cannot do so, it is he and his company that must bear responsibility. Equally, Mathur will realize that courts are not litigants' playgrounds. He cannot assume, leave alone dictate, the pace of a litigation or determine a court's docket. If he has chosen to come to court, it is his duty and responsibility to ensure that when the matter is scheduled and listed, all is in preparedness for the hearing. He is not entitled to endless adjournments to suit his business or financial concerns, and cannot assume that any court will dance attendance on him.

11. None of this can, therefore, possibly be a reflection on Ms Phatak or M/s. Udwadia & Co. If they appeared yesterday at the Review Petition, it was, as Ms Phatak says, a gesture of goodwill towards Sumeet Appliances. But more than that, it was as a courtesy to the Court, and that must be appreciated. It is not as if at the hearing of the Review Petition Mr Rebello was unprepared or had no submissions to make or simply sought an adjournment. Not once did either he or his Attorneys or junior put forward any excuse of

being without instructions to appear. They sought no further time in the afternoon session in the hearing of the Review Petition.

12. I am noting this in some detail because the consequence of Sumeet Appliance's actions must, for the reasons I have indicated, lie at its door alone and cannot in any circumstances conceivably be visited upon M/s. Udwardia & Co., Ms Phatak or their Counsel. If today there is no prosecution of Sumeet Appliance's two Notices of Motion, then the inevitable consequence must follow — and it does.

13. Notice of Motion No. 1608 of 2011 and Notice of Motion (L) No. 1964 of 2014 are both dismissed for want of prosecution.

14. I am making it clear that there is not a slightest possibility now, having been put through the trouble to set out these circumstances in such detail, of restoring either or both those Notices of Motion at the instance of Sumeet Appliances. That will not be done under any circumstances, not even on payment of costs, or even heavy costs. Enough is enough.

15. The ordinary rules that apply when an Advocate seeks a discharge is that Advocate must give notice to the client of this intention. That requires a Chamber Order to be filed and lodged before the Prothonotary and Senior Master and notice to be given to the client. The Prothonotary and Senior Master must then make an order on that Chamber Order seeking a discharge. The purpose of this exercise is to ensure that the litigant is put to notice that his Advocate is opting to return papers and does not wish to continue to

represent him in the litigation any further. I do not see why I should put M/s. Udwadia & Co through the completely unnecessary trouble of having to file a Chamber Order and serve it on Sumeet Appliances. The email correspondence noted above is sufficient notice.

16. In this view of the matter, M/s. Udwadia & Co. are discharged as Advocates for the Plaintiffs in Suit No. 1184 of 2011. However, as a final courtesy and since there will otherwise be trouble in the board listings, I request M/s. Udwadia & Co. to forward a soft copy of this order once it is uploaded by email to Mr Ajay Mathur. They need not do anything further after that.

17. The Registry will take immediate steps to remove the name of M/s. Udwadia & Co. as the Advocates for the Plaintiffs in Suit No. 1184 of 2011.

18. Having regard to this order, I am retaining a copy of the email correspondence and marking it "A1" for identification with today's date.

(G. S. PATEL, J)