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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 940 OF 2018
IN
SUIT NO. 1781 OF 1993

Jain & Jain	...Plaintiff
<i>Versus</i>	
Anileksha Investments Pvt Ltd & Ors	...Defendants

Mr M Bhandari, *i/b Dharmesh Jain, for the Plaintiff/Applicant.*
Mr Devansh Bheda, *i/b Purnanand & Co., for Defendants Nos. 1(a)*
to 1(c).

CORAM: G.S. PATEL, J
DATED: 11th March 2019

PC:-

1. This is the Plaintiff's Notice of Motion for variety of reliefs, all of them ambitious. The first is that the delay of 257 days be condoned. The second is that the orders of KR Shriram J dated 25th November 2016 and 11th August 2017 be set aside. Then the Plaintiff wants to lead further evidence including re-opening the evidence of PW1.

2. In sequence, on 25th November 2016 Shriram J noted that the Plaintiff had not done anything to produce its first witness for cross-examination despite an order passed two years earlier on 12th

December 2014. He, therefore, closed the Plaintiff's case. On 11th August 2017 Shriram J noted this and also noted that on 2nd December 2016 when the matter was listed for dismissal a partner of the Plaintiff appears in person and said he wanted to engage another advocate. Shriram J granted time till 6th January 2017. The new Advocates entered appearance in December 2016 itself. Yet, eight months later, on 11th August 2017 they were unable to say whether the Plaintiff wanted to lead any further evidence or not. On that day, Mr Bhandari said the evidence of PW2 would be led. Shriram J granted three weeks' time, but also ordered that if that evidence is not filed, the suit would stand dismissed for want of prosecution without further reference to the Court.

3. The application today is to set the clock back effectively to 12th December 2014 when Mrs Roshan Dalvi J first marked documents and issued directions for filings. That is something I will not do under any circumstances and especially not in a suit of 1993. I will also not permit the Plaintiff to now reopen the evidence. Mr Bhandari's statement that the potential witness PW2 was found to have died just a few days before, i.e., on 2nd August 2017 does not change the situation at all.

4. The only reason — and absolutely the only reason — to allow the application partly, i.e. to restore the suit to file and recall the order of dismissal, is because admittedly the Plaintiff has deposited an amount of Rs. 49 lakhs approximately in this Court. The order of dismissal does not deal with that aspect of the matter or say what is to happen to the deposit one way or the other.

5. The suit is restored to file and to that extent the order dated 11th August 2017 is partly modified/recalled. The evidence of the Plaintiff is, however, not allowed to be re-opened and remains closed.

6. The Defendants will file and serve an Affidavit of Evidence of their first witness, Affidavit of Documents and compilation of documents on or before 5th April 2019.

7. List the matter for marking the Defendants' documents on 18th April 2019.

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

(G. S. PATEL, J)