

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION No. 2192 OF 2016
IN
SUIT No. 467 OF 2014**

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Hoshi Dastur

Applicant.

In the matter between :

Prafull R. Gandhi

..Plaintiff.

Vs

Hoshi Dali Dastur & Anr

..Defendants.

Ms. Rujufa Patil and Ms. Maira Patel i/by Negandhi Shah & Himayatullah for defendant/original plaintiff/applicant in NMS/1713/2018.

Mr. Rohan Cama and Ms. Ayushi & Ms. Smriti Singh i/by ANB Legal in Notice of Motion No. 2192 of 2016 for the applicant/original defendants.

**CORAM :- B. P. COLABAWALLA, J.
DATED :- 13th September, 2019.**

P.C. :-

1. This Notice of Motion has been filed by the defendants seeking modification of the order dated 8th June, 2016 passed by this Court.

2. On 8th June, 2016 none had appeared on behalf of the defendants, and therefore, this Court inter alia recorded that the

defendants have not filed their affidavit of documents and compilation of documents, the Court shall proceed on the basis that the defendants are not interested for filing their affidavit of evidence, affidavit of documents and compilation of documents in the above suit.

3. It is this part of the order of which modification is sought. Mr. Cama, the learned Advocate appearing on behalf of the defendants stated that it was unfortunate that nobody appeared on behalf of the defendants on 8th June, 2016, when, in fact, their affidavit of documents and compilation of documents were already ready on 27th February, 2016. No one appeared on behalf of the defendants due to some inadvertence and for that the defendants should not be precluded from leading their evidence, was the submission of Mr. Cama. The learned Advocate appearing on behalf of the plaintiff has fairly stated before me that looking to the factual situation, the plaintiff has no objection if the defendants are allowed to file their affidavit of documents and compilation of documents in the Registry of this Court within a period of two weeks from today.

4. In view of the aforesaid fair stand taken by the learned Advocate for the plaintiff, the defendants shall file their affidavit of documents and compilation of documents in the Registry on or

before 27th September, 2019, failing which the same shall not be taken on record and the order dated 8th June, 2016 shall continue to operate. Notice of Motion No. 2192 of 2016 is accordingly disposed of.

5. Once affidavit of documents and compilation of documents are filed in the Registry on behalf of the defendants, the defendants shall be at liberty to file their affidavit in lieu of Examination-in-Chief as and when directed by this Court.

(B.P. COLABAWALLA, J.)