

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 2279 OF 2019
IN
SUIT NO. 8 OF 2013
WITH
SUIT NO. 8 OF 2013

Rohini Y Shah & Ors ...Plaintiffs
Versus
Hiteshbhai N Sanghvi & Ors ...Defendants

Mr Laxman V, for the Plaintiffs.
Mr Gaurav Mehta, with GC Mohanty, i/b M/s Mohanty & Associates,
for Defendants Nos. 1 to 4 and 6 to 8.

CORAM: G.S. PATEL, J
DATED: 9th March 2021

PC:-

NOTICE OF MOTION NO. 2279 OF 2019:

Atul G.
Kulkarni

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by Atul G.
Kulkarni
Date: 2021.03.10
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1. The Notice of Motion is made absolute in terms of prayer clause (a). It is for restoration of the Suit. The Suit was dismissed without further reference to the Court for non-compliance with the directions passed on 30th July 2018. There were three sets of directions. The last of these was to file Compilation of Documents.

The Plaintiffs did not comply with this last direction. There was correspondingly no Affidavit of Documents either. The reason given in the Notice of Motion says that the Plaintiffs simply have no documents. All the documents are with the Defendant.

2. On this representation, the Suit is forthwith restored to file. The order of dismissal is recalled and set aside. It is however noted that the Plaintiffs have no documents and will not be filing an Affidavit of Documents. They will not hereafter be permitted to file the Affidavit of Documents or a Compilation of Documents.

3. The Evidence Affidavit of the Plaintiffs' first witness has already been filed.

4. The Interim Application is made absolute. No costs.

SUIT NO. 8 OF 2013:

5. Mr Monil Punjabi, learned Advocate of this Court (C/o Mr Vishal Kanade, 103, Gundecha Chambers, NM Road, Mumbai 400 023, Mobile 92244 26201) is appointed as a Commissioner and is requested to record the cross-examination of the Plaintiffs' first witness.

(a) The Commissioner is at liberty to exercise discretion under Order XVIII Rule 4(4) of the Code of Civil Procedure, 1908, to note the demeanour of the witnesses where necessary.

- (b)** All cross-examination shall be conducted strictly in question and answer form.
- (c)** The Commissioner will also be at liberty to direct that the whole or any part of the cross-examination should be video recorded for later reference of the court. Should that be done, the original audio visual recording will be submitted along with the Commissioner's Report to the Registry.
- (d)** Liberty to the parties as also to the Commissioner to apply in case of difficulty.
- (e)** All re-examination will be conducted only in court.
- (f)** Costs of the commission shall be borne equally by the parties.
- (g)** Parties shall also pay costs of Rs. 500/- per hearing to the Court Clerk who attends the Commission with Court Papers. This is required since these clerks attend the commission in addition to their regular duties and outside their normal working hours;
- (h)** The Commissioner is not to permit any applications for adjournment on dates previously fixed, except where absolutely unavoidable. Counsel's inconvenience or unavailability does not constitute such unavoidability.

6. List the matter on 26th April 2021 for a status report including as to progress before the Commissioner.

7. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production of a digitally signed copy of this order.

(G. S. PATEL, J)