

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**NOTICE OF MOTION NO. 446 OF 2019
IN
APPEAL (L) NO. 229 OF 2012**

Bhagatsinh Jesrani
sole proprietor of Insimpex Corporation
V/s.Petitioner

Crowe Boda & Co. Pvt. Ltd. .. Respondents

Mr. P.G. Parkar for the Applicant.
Ms. N. Sumnani i/b. Bhatt & Saldhana for the Respondents.

**CORAM : K.R. SHRIRAM &
RAJESH S. PATIL, JJ.
DATED : 27th FEBRUARY, 2023**

P.C. :

1. The Notice of Motion is to recall order dated 22nd April, 2016 and 20th June, 2016 which were conditional orders because the Court had stated that there was a deficit in the Court fees paid by the Appellant, and if the Appellant does not pay the deficit in a particular time, the Appeal would get dismissed without further reference to the Court.

2. Mr. Parkar states that the deficit Court fees has been paid, but after the date given by the Court. Therefore, in effect the Appeal has got dismissed for non payment, but subsequently the Court fees have been paid.

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3. When we took up the matter on 30th January, 2023, Mr. Parkar requested for some time to take instructions because the Appellant was almost 90 years of age. This Court was pleased to pass the following Order on 30th January, 2023:

"Ms. Sumnani Advocate for Respondent states that the copy of affidavit-in-support of Notice of Motion has not been served upon Respondent. Mr. Parkar states that a copy will be handed over today itself. Mr. Parkar further states that Applicant is about 90 years old and requests the matter be stood over by a week to enable him to take instructions. Mr. Parkar states that by 3rd February, 2023, the proof of payment of deficit Court Fees of Rs.50,230/- will be provided to Respondent's Advocate. Should Respondent wish to file any reply, they may do so and serve a copy thereof by 3rd February, 2023.

3. Stand over to 6th February, 2023."

4. On 6th February, 2023, this Court was pleased to pass the following order:

"1. On 30th January, 2023 following order came to be passed:

Ms. Sumnani Advocate for Respondent states that the copy of affidavit-in-support of Notice of Motion has not been served upon Respondent. Mr. Parkar further states that Applicant is 90 years old and requests the matter be stood over by a week to enable him to take instructions. Mr. Parkar states that by 3rd February, 2023, the proof of payment of deficit Court Fees of Rs.50,230/- will be provided to Respondent's Advocate. Should Respondent wish to file any reply, they may do so and serve a copy thereof by 3rd February, 2023.

3. Stand over to 6th February, 2023."

5. Mr. Parkar states that he has not been able to take any further steps since the original Appellant's son who was instructing him is residing in United States of America, and he

would require atleast 15 more days to take instructions. We are not inclined to grant any further time.

6. One of the primary reason why we are disinclined to grant any further time is because nothing would remain in this appeal. This Appeal, being Appeal (L) No. 229 of 2012 is to impugn order dated 13th February, 2012 passed by the learned Single Judge of this Court rejecting the Appellant's Notice of Motion for summary decree against the Respondents in the sum of Rs. 5 Lakhs. On the same date i.e. 13th February, 2012, we are informed by Ms. Sumnani that the same learned Single Judge heard Notice of Motion No.922 of 2008 that was taken out by the Respondent for rejection of plaint under Order VII Rule 11(a) of the Code of Civil Procedure, 1908, taken out by the Respondent on the ground that there can be no cause of action against Respondents in view of Section 230 of the Contract Act, i.e. agent of disclosed principal cannot be liable to any party. The learned Single Judge considered the averments in the plaint and was satisfied that in the plaint itself it is averred that the Respondents were the Agents/ Representatives of "Protection and Indemnity Club, M/s. Steamship Mutual Underwriting Association". The Plaint was therefore rejected. When the Plaint itself has been rejected, the question of considering the Appeal in an interim order passed in the suit would not arise. The Appeal is therefore dismissed on

this ground also, apart from the fact that the legal heirs of the Appellant did not take steps in time to bring themselves on record.

. Notice of Motion is accordingly dismissed.

(RAJESH S. PATIL, J.)

(K.R. SHRIRAM, J.)