

IN THE BOMBAY CITY CIVIL COURT AT GREATER BOMBAY

**NOTICE OF MOTION NO.3954 OF 2015
IN
SHORT CAUSE SUIT NO. 1095 OF 2004**

Shri Pyarelal Ramnaresh Gupta & Ors

.. Plaintiffs

Versus

Shri Durgaprasad Ramnaresh Gupta

..Defendants

Mr. Pandya, Advocate for the plaintiff.

Mr. Thakkar, Advocate for the defendant.

**CORAM : HIS HONOUR JUDGE SHRI V. V. PATIL
(C.R.NO.02)**

:: ORDER ::

[Delivered on 18th December 2015]

1] The defendants filed this notice of motion and prayed to set aside the order passed by this Court on 23/09/2015 by which this court has forfeited the right of defendant to cross-examine the plaintiff.

2] According to defendant, on 23/09/2015 their advocate was absent as there was some religious festival at his house, as such he failed to attend this Court to cross-examine the witness. It is stated that the absence of the advocate for defendant on 23/09/2015 was not deliberate or intentional. Thus, he prayed to set aside the order passed by this court on 23.9.2015.

3] The plaintiffs filed reply to the notice of motion and objected the same on the ground that the defendant only to prolong the matter remaining absent and avoiding to contest the suit on its own merit. It is stated that the reasons assigned by the defendant for the absence of their advocate on 23/09/2015 are not genuine so the same cannot be accepted. Thus the plaintiffs prayed to reject the notice of motion.

4] Heard both the sides. Following points arise for my determination and I record my findings thereupon as under for the reasons given below.

<u>Points</u>	<u>Findings.</u>
1] Whether the notice of motion as taken out by defendant deserves to be allowed ?	Yes
2] What order ?	As per final order.

:: Reasons ::

Points No.1 :-

5] The contentions of defendant in the notice of motion has been supported by an affidavit, apart a judicial note can be taken that in the month of September 2015 there was Ganpati Festival in Maharashtra State. The affidavit of defendant in support of the notice of motion therefore can not be discarded or disbelieved to hold that the advocate for the defendant was absent as he was engaged in performing the religious activities. Even otherwise in my opinion a fair opportunity should be given to defendant to contest the suit on merit but subject to costs. Hence order.

:: Order ::

- [a] The notice of motion no.3954/2015 is allowed subject to cost of Rs.5,000/-[Five Thousand only].
- [b] The defendant shall deposit the cost within one month from today, the same be credited to Government of Maharashtra.
- [c] After deposit of the cost amount the defendant is at liberty to cross-examine the plaintiff's witness.

sd/-

Date: 18/12/2015

**[V.V.PATIL]
Judge
City Civil Court, Mumbai**

“I affirm that the contents of this PDF file order are the same, word to word, as per the original order.”

Name of the Steno with post :- Mrs. M. S. Putta (H.G.Stenographer)

- Name of the Judge (with Court no.) :- Shri V.V.Patil, C.R.No.2
- Date of pronouncement of order :- 18/12/2015
- Order signed by the P.O. on :- 18/12/2015
- Order uploaded on :- 19/12/2015