

MHCC040006322022



IN THE BOMBAY CITY CIVIL COURT AT BOMBAY
BORIVALI DIVISION, DINDOSHI (BRANCH)

NOTICE OF MOTION NO. 263 OF 2022
IN
SUMMARY SUIT NO. 396 OF 2021

Mr. Shailendra Anat More

...Plaintiff

V/s.

Mrs. Zahida Begum shaikh & Anr

...Defendants.

Appearance:-

Ld. Adv. Ms. Sakina Rangwala for the plaintiff.

Ld. Adv. Ms. Disha Rawal for the defendants.

Coram: Her Honour Judge,
Smt. V.D. Ingle
(C.R.No.02)

Date : 2nd February, 2024

ORAL ORDER

1. This Notice of Motion is taken out by the plaintiff to restore Summons for Judgement No. 200/2018 filed in Summary suit 545/ 2018.

2. Read affidavit in support of Notice of Motion.

3. On perusal of record, it appears that the matter was kept on 03/01/2024 for reply to N/m by defendant, but he failed to file his reply to Notice of Motion No. 263/2022, hence Notice of Motion proceeded without reply of defendant on 03/01/2024.

4. The learned counsel for the plaintiff submitted that on 11/10/2018, he filed registered Summons for Judgment No. 200/2018 alongwith affidavit in support alongwith bailiff report before this court and the same was duly served on defendant by the plaintiff on 09/10/2018. Despite being the Summons for Judgment was served on the defendant but defendant and his advocate failed to remain present before this court. Hence, the said matter was adjourned on 15/01/2019 for hearing on Summons for Judgment.

5. He further submitted that on 19/03/2019 the advocate for defendants appeared and filed registered Chamber Summons No 343/2019 alongwith affidavit in support for the delay of 88 days in filing leave to defend. After hearing of both sides, this court passed an order that Chamber Summons No. 343 of 2019 is allowed subject to cost of Rs. 1,500/- to be paid by the defendant to the plaintiff within seven days from the order. On. 26/03/2019 the defendant had complied the said order of this court and matter was kept for hearing on Summons for Judgment .

6. He further submitted that on 24/09/2020, the suit was converted into Commercial Suit from Summary Suit and view thereof conversion of Summary suit into Commercial Suit, the Summons for

Judgment was not survived. Accordingly, this court held that Summons for Judgment No. 200/2018 filed in Summary Suit No. 545/2018 is disposed off and meantime, the said Commercial Suit was once again converted into Summary Suit No 396/2021. Hence, he prayed that the Notice of Motion taken by the plaintiff be made absolute.

7. On perusal of record, it appears that initially the suit was registered as Summary suit No. 545/2018. On 11/09/2018 the plaintiff and defendant advocate appeared and the matter was adjourned on 11/10/2018. Meantime, on 26/09/2018 by preceipe, the learned counsel for the plaintiff filed writ of summons at Exh. 6 and he took draft Summons for Judgment alongwith affidavit in support as defendant was already served on 04/09/2018 and matter was adjourned on 11/10/2018. Therefore, matter pending for Summons for Judgment hearing. Thereafter, on 07/02/2020, vide office order No. 28/2020, the Summary Suit No.545 of 2018 converted into Commercial Suit No. 99/2020. Thereafter, matter was pending due to Covid-19 & on 24/09/2020 the court has passed an order that the Summons for Judgment No. 200/2018 filed in Summary Suit No. 545/2018 is required to be disposed off in view of conversion of suit into Commercial Suit. Hence, Summons for Judgment filed in Summary Suit No 545/2018 stands disposed off. Thereafter, again on 02/08/2021 void office order No. 09 of 2021 this Commercial Suit again re-registered and re-numbered as Summary Suit No. 396/2021. Thereafter, on 17/03/2022 the learned counsel for the plaintiff tendered this registered the Notice of Motion No. 263/2022. Considering this facts and circumstances, that the Summary Suit

converted in to Commercial Suit and Commercial Suit again converted into Summary Suit. Hence, it is necessary to restore the Summons for Judgment which is disposed off by this court on 24/09/2020. Hence, I proceed to pass the following order:

ORDER

- 1) Notice of Motion No. 262 of 2022 is hereby allowed in terms of prayer clause (a).
- 2) The Summons for Judgment No. 200/2018 is restored. The plaintiff is directed to get re-register and re-number the said Summons for Judgment as suit is re-numbered as a Summary Suit in the year 2021.
- 3) Notice of Motion No. 263 of 2022 stands disposed off accordingly.

Date : 02.02.2024

(Smt. V.D. Ingle)

Judge

City Civil Court,
(Borivali Division),
Dindoshi, Goregaon,
Mumbai

Date of dictation : **02.02.2024**

Date of transcription by steno : **03.02.2024**

Checked & signed by HHJ on : **08.02.2024**

“CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER.”	
09.02.2024 at 02.40 p.m. UPLOAD DATE AND TIME	Ms. S.S.Chudji (H.G.STENOGRAPHER) NAME OF STENOGRAPHER
Name of the Judge (With Court Room No.)	H.H.J Smt. V. D. Ingle (Court Room No.2)
Date of pronouncement of Judgment/Order	02.02.2024
Judgment/Order signed by P.O. on	08.02.2024
Judgment/Order uploaded on	09.02.2024