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

**SUIT NO.2256 OF 1998**

**WITH**

**NOTICE OF MOTION NO.1450 OF 2013**

Harinarayan G. Bajaj and another ..Plaintiffs.

*Versus*

Vijay Agarwal and others ..Defendants.

Ms. Sonal i/by Mr. Vivek Sharma, for the Plaintiffs.

Mr. Rajesh Shah with Mr. Girish Kedia, for Defendant Nos.1, 2, 4 and 5.

**CORAM : G.S. Patel, J.**

**Monday, 27th January 2014.**

**P.C. :**

1. In this matter, the plaintiffs have filed a Notice of Motion No.1450 of 2013. Ms. Sonal, learned Advocate for the plaintiffs, tenders an affidavit affirmed today. This is a further affidavit in support of the notice of motion, which seeks that the 12th defendant be permitted to be examined before the plaintiffs in view of his poor health. From this affidavit, it appears that the 12th defendant has recently been hospitalized.

2. Mr. Shah, learned Advocate for defendant Nos.1, 2, 4 and 5, has only

just been given a copy of this affidavit and has had no time to respond to it. That apart, it is unclear whether the 12th defendant is in a position to give evidence, regard being had to his present state of health.

3. There is no reason why the entire trial should be delayed on account of this. Ms. Sonal can renew her application at an appropriate time, if necessary for interposing the evidence of 12th defendant. In the meantime, the trial can commence. The matter is, otherwise, ready for trial.

4. At this stage, Mr. Shah states that defendant No.10 has expired. Ms. Sonal, on instructions, states that she will drop / delete defendant No.10.

5. The plaintiffs' affidavit in lieu of examination-in-chief has already been filed. Documents are yet to be marked.

6. List the matter for marking of documents on 10th February 2014. Advocate for the plaintiffs to file the compilation of documents, properly indexed and paginated along with an affidavit of documents in the registry on or before 3rd February 2014.

(G.S. Patel, J.)