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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**ORDINARY ORIGINAL CIVIL JURISDICTION**  
**SUIT NO. 2012 OF 2009**  
**WITH**  
**NOTICE OF MOTION NO. 1345 OF 2014**

Ram Nagar Trust No.1 & Anr ...Plaintiffs

*Versus*

Mehtab L Sheikh & Ors \_\_\_\_\_ ...Defendants

**Mr KR Patel**, *with Prasad Shenoy, i/b Crawford Bayley & Company, for the Plaintiffs.*

**Ms Gargi Bhagwat**, *i/b Divekar Bhagwat & Company, for Defendant No.1.*

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**CORAM: G.S. PATEL, J**  
**DATED: 27th February 2018**

**PC:-**

1. Issues were framed on 26th September 2016 (KR Shriram J). The Plaintiffs were to file their list of witnesses, Evidence Affidavit and compilation by 24th October 2016. The 1st Defendant had already filed an affidavit of documents. The Plaintiffs state that their affidavit of documents was ready and would be filed in the registry. The matter was kept on 27th October 2016. On that date, the Plaintiffs applied for time to comply with these directions. The matter was stood over to 5th November 2016.

2. The Plaintiffs did nothing. Even today, they are in continued default. More than a year has passed. No application seems to have been made for an extension of time or for condonation of delay. Nothing at all has been filed.

3. Today, their advocate is instructed to ask for a week's time to comply.

4. The application is opposed by Ms Bhagwat for the 1st Defendant, who submits this cannot be permitted for the asking, especially in a suit of 2009. There is no valid reason for non-compliance. At a minimum, the Plaintiffs should be put to terms.

5. I believe Ms Bhagwat is correct. There are only two options. If the Plaintiffs apply for extension of time, however brief, they must be put to terms or, alternatively, their case will be closed with everything that this implies, i.e., an immediate failure of the suit. The latter course is extreme. Therefore, the only question is what are reasonable terms to be imposed on the Plaintiffs.

6. I compute the delay from 25th November 2016 until today. This is a period of 450 days; possibly more, but not less. Costs must be imposed for each day's delay. I do not think that, in this day and age, and especially in this city, costs of Rs.1000 per day are at all unreasonable. Anything less than that is illusory and meaningless and the time has gone when a Court could, would or should pick up some utterly random figure like Rs.5,000 or Rs.25,000, a number wholly without tether to the actual days of delay. Fixing *ad hoc*

figures like this is counter-productive. Parties believe that even if the delay is inordinate, the costs of that delay will be negligible; and hence they continue to extend the delay. The costs must be real. They must be sufficient to convey the message that non-compliance with our orders brings consequences; that these consequences are inevitable and unavoidable; and the consequences are not some piffling trifle.

7. Computed at Rs.1000/- per day for each day's delay for 450 days, the costs work out to Rs4,50,000/-. This amount of Rs.4,50,000/- will be paid to the 1st Defendant as costs by 7th March 2018 and time to complete the filing is, subject to payment of those costs, extended till that date. No filing is to be accepted in the registry unless there is proof of costs having been paid. It is made clear that if the costs are not paid or filings are not completed by that time, the Suit will stand dismissed without further reference to the Court.

8. At the request of the 1st Defendant, list the matter for compliance and directions on 8th March 2018 on the supplementary board.

9. At 3:00 pm, the matter is mentioned by the Plaintiffs again seeking a reduction in the order of costs. The application does not assist the Plaintiffs in any way. To the contrary. I am now told an Evidence Affidavit was ready earlier. It was never filed. It was not even served. No application was made to extend time or for leave to file beyond time.

10. Then I am told that the 1st Plaintiff is a public charitable trust and the suit is about land for an educational or charitable purpose. This is even more shocking. That a trust should be so utterly negligent about its own case is reason enough to warrant immediate action against the trustees and have every one of them removed. A public trust has a higher duty of care, not a lower one. Besides, this submission is utterly egregious: what am I being told? That because the 1st Plaintiff is a trust therefore a different standard applies? Before courts, all parties are exactly the same. We will make exceptions for the poor, the illiterate, the helpless. They will receive our protection. But educated trustees charged with a solemn fiduciary duty will not get a free pass only because they claim to espouse some worthy cause.

11. Worse yet: in November 2007, the 1st Defendant gave notice to the Plaintiffs' Advocates pointing out non-compliance with Shriram J's directions. The matter was listed before Dhanuka J. It did not reach. The Plaintiffs, despite this notice, and despite the matter being listed, did nothing. They even then did not serve any unaffirmed copies of their filings, nor did they seek leave to file them and have the delay condoned. They sat by. The delay is either deliberate or it is a result of gross negligence.

12. The Plaintiffs' application now assumes that Court will continuously condone delays, that delays are par for the course. This is an assumption that we must be rid of immediately. For far too long we have been used to issuing directions without consequences for default, and for far too long Courts have assumed that condoning delay by saying this is a 'final opportunity' is

sufficient. Clearly it is not. It is only when there is an order of the kind I have passed today that the defaulting party seems to get galvanized into compliance, and that we see, for the first time, some alertness. Parties and their Advocates will understand that what is issued with directions for filing is not a recommendation. It is *an order* of the Court. It does not give a party a choice. Compliance is mandatory, not optional. Shriram J's orders cannot be treated with such contempt and disregard. It cannot be assumed that non-compliance with his, or any other, Court's orders has no consequence. If there is a genuine reason to extend time, an application must be made to the Court and directions sought.

13. Let me put it plainly. No more adjournments. No more '*tareek pe tareek*'. Enough is enough. That a Court will endlessly grant adjournments is not something that parties or advocates can take for granted. Nor should they assume that there will be no consequences to continued defaults and unexplained delay.

14. This application at 3:00 pm is sufficient to warrant an increase in costs. For this once, I will not do so. I make it clear that in future cases, the daily delay cost rate will, on any such application for reduction, be doubled. As a matter of mathematical certainty, there is always near at hand the Fibonacci sequence of numbers.

**(G. S. PATEL, J)**