

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.4387 OF 2014  
IN  
FIRST APPEAL (ST) NO.14490 OF 2010**

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| Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders. |
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Mr.Ketan Joshi i/b Mr.H.V.Kode for the applicant

**CORAM : K.K.TATED, J.**  
**DATED : 23/04/2015**

**PC:**

- 1 Heard the learned counsel for the applicant.
- 2 Though respondents are duly served, no one appeared on behalf of them when the matter was called out.
- 3 This application is preferred by plaintiff for restoration of Civil Application No.470 of 2011 which was dismissed in view of conditional order dated 1.3.2011 for non-filing of affidavit of service.
- 4 The learned counsel for the applicant submits that as per order dated 1.3.2011 they forwarded notice to the respondents on 7.4.2011. He submits that thereafter they filed affidavit of service dated 18.4.2011 without acknowledgement. Hence, office dismissed the Civil Application in view of

conditional order.

5 The learned counsel for the applicant submits that on the date of filing of affidavit of service, acknowledgement was not received by the applicant and therefore, same was not exhibited to affidavit of service. He further submits that they learnt about the dismissal of the Civil Application in view of conditional order in the month of December, 2013. Thereafter, they preferred the present Civil Application. He submits that they have good chance of success in the present proceeding. He submits that in the interest of justice, this Hon'ble Court be pleased to restore the Civil Application No.470 of 2011 and allow the applicant to comply the conditional order dated 1.3.2011 within stipulated time.

6 Considering the submissions made by the learned counsel for the Applicant and the averments made in the Application, I am satisfied that the Applicant has made out a case for allowing the present Civil Application. Hence, following order:

- a) Delay in preferring the Civil Application is condoned.
- b) Civil Application No.470 of 2011 is restored on file.

c) 8 weeks time is extended from today to comply the conditional order dated 1.3.2011 passed by this court in Civil Application No.470 of 2011, failing which present Civil Application shall stand dismissed without referring back to the court.

d) Civil application stands disposed off accordingly.

**(K.K.TATED, J.)**