

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

**NOTICE OF MOTION NO. 12 OF 2015
IN
SUIT NO. 114 OF 2007**

State Bank of India

.. Applicant

In the matter between :

State Bank of India

.. Plaintiff

Vs.

Pawankumar Ramchandra Gupta & Ors.

.. Defendants

Ms.Nikita Panjwani a/w. Mr.Sham Walve i/b AKS Legal consultant for plaintiff.

None for defendants.

**CORAM : K.R.SHRIRAM, J.
DATED : 9TH OCTOBER, 2015**

P.C.

1 This notice of motion is taken out by the applicant-plaintiff to condone the delay of 1748 days in filing the notice of motion, to set aside the order dated 27.01.2009 dismissing the suit for default and to restore the suit to file.

2 I have considered the affidavit in support and also heard the counsel for the plaintiff. In the affidavit in support, it is explained that the earlier advocate was having serious health issues and hence could not appear and

the plaintiff was under the impression that the advocate was taking care of the matter. The advocate informed the plaintiff about the dismissal of the suit almost 2 ½ years after the dismissal and also returned the brief. The plaintiff then had to engage fresh advocate, instruct advocate to draft the application for restoration and approve the draft of the notice of motion and the affidavit in support. In paragraph nos.5 to 9, the plaintiff has explained this.

3 Though I feel that the time taken between the plaintiff receiving the draft notice of motion and the affidavit in support from the plaintiff's advocate and the plaintiff reverting with instructions cannot be straight away taken as justifiable, still in the overall interest of justice, the notice of motion requires to be allowed.

4 The notice of motion is allowed in terms of prayer clauses (a) and (b). The suit is restored to file.

5 Since the claim in the suit is less than Rs.1 crore, the matter, therefore, be transferred to the City Civil Court, Bombay.

(K.R. SHRIRAM, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
order/judgment.