

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO.1224 OF 2015
IN
SUMMONS FOR JUDGMENT NO.30 OF 2010
IN
/SUMMARY SUIT NO.2886 OF 2009**

Naseem Bano Irfan Ahmed Ansari)..Applicant

IN THE MATTER BETWEEN :

Mr.Dilshad Inamulla Khan).. Plaintiff

Vs.

Naseem Bano Irfan Ahmed Ansari & Ors.).. Defendants

Mr.A.A.Maniyar for the plaintiff.

Mr.Pratap Singh for defendants.

CORAM : K.R.SHRIRAM, J.

DATE : 11th August, 2015

P.C.

1 This Notice of Motion is taken out on behalf of the defendant no.1 to condone the delay in taking out the Notice of Motion and re-call the ex-parte decree passed on 11.1.2011.

2 The applicant has in addition to the affidavit in support, filed a further affidavit affirmed on 31.7.2015. In the affidavit in support, the applicant has explained the reasons why she was unable to remain present either in person or through an Advocate on 11.1.2011. The applicant is a slum-

dweller and it is stated in the affidavit that she was suffering from heart ailment. But what stands out is in the ex-parte decree passed on 11.1.2011, it is observed that no reply has been filed by the 1st defendant. The applicant confirms no reply was filed in the registry but the applicant had affirmed affidavit in reply on 24.2.2010 and the copy of the same has been served on the Advocate for the plaintiffs on 31.3.2010. In my view, the plaintiffs ought to have brought this fact to the notice of the Court on 11.1.2011.

3 In the circumstances, in my view, it is a fit case to set aside the ex-parte decree since I am satisfied with the explanation given in the affidavit in support read with the further affidavit.

4 Notice of Motion therefore, allowed in terms of prayer clauses-(a) and (b).

5 The defendant no.1 has to be put to terms. Defendant no.1 to pay sum of Rs.3000/- as cost to the plaintiffs' Advocate within 4 weeks from today. Suit is restored to file. Summons for Judgment be listed for hearing on 8.9.2015.

(K.R. SHRIRAM, J.)