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

NOTICE OF MOTION NO.722 OF 2015
IN
SUIT NO.194 OF 2011

Madhukant Gupta	..Applicant
<u>In the matter between</u>	
M/s. Magcon & Ors.	..Plaintiffs
-Versus-	
Bombay Cranes Private Limited & Ors.	..Defendants

.....
Mr. Sanmish Gala i/b. M/s. Markand Gandhi & Co. for the Plaintiffs.
Mr. Asutosh Shukla i/b. M.U.Pandey and R.M.Reddy for Defendant No.1.
Ms. Ambreen Saheed i/b. M/s. MDP & Partners for Defendant No.3.
.....

CORAM: A.K. MENON, J.

DATE : 10th AUGUST, 2015.

PC.:

This Notice of Motion is taken out on behalf of defendant no.3 to set aside the order dated 22nd November, 2011 passed by the Prothonotary and Senior Master transferring the suit to the list of undefended suits as against defendant no.3 for failure to file the written statement within the time granted.

2] The Motion is opposed by the plaintiffs on the ground that the delay is admittedly of 1250 days and that the notice of motion, therefore, deserves to be dismissed. Learned counsel for defendant no.3 points out that defendant no.3 who is a director of defendant no.1 company has been

ill having suffered from brain hemorrhage and paralysis since about 2010 and was intermittently admitted to the hospital and has been unable to attend day to day matters and affairs including the suit.

3] In para 7 of the affidavit in support of the notice of motion for condonation of delay, it is stated that he has been advised to take complete rest and not involve himself in any kind of physical or mentally strenuous activities. He had lost sight of the suit proceedings and it took him a while to get a grip of the matter and in the following few months he instructed his advocates to draft the written statement. It took him substantial time to do so in view of the nature of the matter as a result of which, the written statement could be affirmed only on 13th March, 2015. In the meanwhile, the suit came up for directions in the weekly board of the Prothonotary and Senior Master on 22nd November, 2011. The suit came to be so transferred since no written statement had been filed by the defendant.

4] The affidavit also relies upon various medical reports between 2010 to May 2014, all of which, I am satisfied supports the case of the defendant no.3. Despite the opposition, considering all the grounds mentioned in the affidavit in support, the delay in taking out the Notice of Motion is liable to be condoned. Accordingly, I pass the following order:-

(i) The delay of 1250 days in taking out the Notice of Motion is condoned.

(ii) Order dated 22nd November, 2011 passed by the Prothonotary and Senior Master transferring the suit

as against defendant no.3 to the list of undefended suit is set aside.

(iii) The written statement dated 13th March, 2015 shall be filed in the Registry on or before 14th August, 2015 with advance copy to the advocate appearing for the plaintiffs and other parties.

(iv) There will be no order as to costs.

(A. K. MENON, J.)

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