

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

**NOTICE OF MOTION NO.1285 OF 2015
IN
SUIT NO.2992 OF 2003**

Vaibhav ExportApplicant/Org. Plaintiff

IN THE MATTER BETWEEN :

Vaibhav ExportPlaintiff

V/s.

Bharat C. Bagri & Ors.Defendants

Ms. Manjiri Parasnis for the plaintiff.

Mr. Abdul Wahab A.H. Mukri i/b. M/s. Purohit & Co. for the defendant
nos.2 and 3.

**CORAM : K.R.SHRIRAM,J
DATE : 12th October, 2015**

P.C.:-

1 This notice of motion is taken out on behalf of the plaintiff to condone the delay of two days in filing the present notice of motion and recall the order dated 12th June, 2015 dismissing the suit and restore the same to file.

2 The counsel for the defendants strongly opposes the notice of motion. The counsel for the defendants states that from the various orders passed by this court in this matter, it could be noticed that the plaintiff has not seriously prosecuted the suit. The counsel

further submits that by an order dated 8th July, 2014 read with order dated 17th July, 2014, the plaintiff was directed to go to the office of the Interpreter of this court to explain to the plaintiff the contents of the affidavit in lieu of examination in chief filed by the plaintiff and to certify that the contents have been so explained. The counsel for the defendants states that he has no information whether these directions have been complied with or not. Therefore, the counsel for the defendants submits that it is rather obvious that the plaintiff is not interested in prosecuting the suit.

3 I have considered the records and proceedings and it does appear that the plaintiff had been to the office of the Interpreter on 1st September, 2014 and the contents of his affidavit in lieu of examination in chief has been explained to the plaintiff. I have also considered the affidavit in support of the notice of motion in which it is stated that the plaintiff's advocate who is an individual advocate on record was held up in another court and by the time the advocate reached the court, the board had collapsed and the suit got dismissed. I do not have any reason to disbelieve the contents of the affidavit. The advocate who is appearing for the plaintiff confirms the same.

4 In the circumstances, the notice of motion is disposed of
as allowed in terms of prayer clauses -(a) & (b) and the suit is
restored to file.

5 The counsel for the defendants is pressing for cost. The
cost will be costs in the suit.

6 PW-1 to remain present in court on 29th October, 2015 for
marking of documents.

7 Stand over to 29th October, 2015.

(K.R.SHRIRAM,J)

CERTIFICATE

**Certified to be true and correct copy of the original
signed Judgment/Order.**