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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION NO.1430 OF 2014
IN
CHAMBER SUMMONS NO.1409 OF 2010
IN
SUIT NO.203 OF 2009**

M/s. Kukreja Construction Co. & Ors. ...Applicants
(Original Plaintiffs)

In the matter between:

M/s. Kukreja Construction Co. & Ors. ...Plaintiffs
vs
Somchand Shah ...Defendant
And
Sakarben Hirji Goshar & Ors. ...Respondents

.....
Mr. Chirag Mody, a/w. Mr. Rishabh Jogani, Ms. Prachi Garg and Mr.
Joaquim Fernandes, i/b. DSK Legal, for the Applicants/Plaintiffs.
....

CORAM : S.C. GUPTE, J.

DATED : NOVEMBER, 24, 2015

P.C. :

. The Notice of Motion seeks recall and setting aside of a conditional order dated 23 January 2012 passed in Chamber Summons No.1409 of 2010, dismissing the Chamber Summons and restoration of the Chamber Summons to the file of the Court. The Chamber Summons was dismissed by a self operative order of 23 January 2012. The order provided that, if the Plaintiffs did not produce proof of service of the Chamber Summons, the same shall stand dismissed for want of prosecution without

any further reference to the Court.

2. It is the Plaintiffs' case that the Chamber Summons was duly served by the Plaintiffs on the Defendant and the Respondents but that, due to inadvertence, the affidavit proving the service of the Chamber Summons was not filed within time. Plaintiffs have produced an affidavit in proof of service dated 4 August 2014. This affidavit shows that the Chamber Summons was duly served on the Defendant and the Respondents before the self operative order was passed by this Court on 23 January 2012 and also separately afresh after the self operative order was passed.

3. Despite service of this Notice of Motion, none of the Defendants or Respondents is present before the Court. There is no reply to the Notice of Motion. For the reasons stated in the affidavit in support of the Notice of Motion, the delay is condoned and the Notice of Motion is made absolute in terms of prayer clause (b). Chamber Summons No.1409 of 2010 shall now appear on board for hearing on 8 December 2015.

(S.C. GUPTE, J.)