

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
NOTICE OF MOTION NO.2031 OF 2015  
IN  
SUIT NO.292 OF 2015**

Goregaon sukhnavas ... Applicant/Plaintiff  
versus  
M/s. Sukushal Builders and  
Developers and Ors. ... Defendants

Mr. Bhavin R. Bhatia, for Plaintiff.

Ms. Aninkya Palav i/by M/s. Laureate, for Defendant Nos.1 and 2.

**CORAM: S.J. KATHAWALLA, J.**

**DATE: 21<sup>st</sup> DECEMBER, 2015**

**P.C.:**

1. On 3<sup>rd</sup> August, 2015, the Prothonotary and Senior Master passed the following order :

*“Advocate for Plaintiff submits that Defendant No.2 is since deceased and Chamber Summons is being taken out for bringing the legal heirs of Defendant No.2 since deceased, on record.*

*Since Chamber Summons is allowed, Advocate for Plaintiff to take steps to serve with Writ of Summons along with amended copy of the Plaint upon Defendants on or before 29-10-2015, failing Suit against Defendants will be dismissed for non-compliance of O.S.Rule 87. Office to issue fresh Writ of Summons, if required. Returnable date is extended till 29-10-2015”*

2. The Plaintiff was unable to serve the Writ of Summons on the heirs of Defendant No.2 by 29-10-2015. In view thereof, pursuant to the above order, the Suit stood dismissed. The Plaintiff has now taken out the above Notice of Motion seeking restoration of the Suit. The Notice of Motion is served on the legal heirs of Defendant No.2. However, they are not present in Court by themselves or through their Advocate. The Advocate who had earlier appeared for Defendant No.2 (now deceased) states that he has no instructions from the legal heirs of Defendant No.2 to appear in the Notice of Motion. In view thereof, for reasons set out in the Affidavit in support of the Notice of Motion, the Notice of Motion is allowed in terms of prayer clauses (a) and (b), which are reproduced hereunder :

“(a) that the condition order dated 03-08-2015 passed by the Learned Prothonotary and Senior Master in Suit No.292 of 2015 dismissing the Suit by 29-10-2015 be set aside and pass necessary order as deems fit and proper;

(b) that the Suit No.292 of 2015 and Notice of Motion No.815 of 2015 and order dated 09-12-2014 and 12-02-2015 passed in the Notice of Motion No.815 of 2015 be restored”;

3. The Notice of Motion is accordingly disposed of.

4. The returnable date for service of the Writ of Summons on the legal heirs of Defendant No.2 is extended upto 25-01-2016.

**( S.J.KATHAWALLA, J. )**