

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

**NOTICE OF MOTION NO.52 OF 2016
IN
SUMMARY SUIT NO.1606 OF 2006**

Ashok K. ShahApplicant/Plaintiff

V/s.

Parag A. DoshiDefendant

Mr. Sameer R. Bhalekar for the applicant/plaintiff.

Mr. Naushad Engineer a/w. Mr. Anand C. i/b. Mr. Yogesh Adhia for the defendant.

**CORAM : K.R.SHRIRAM,J
DATE : 1st OCTOBER,2016**

P.C.:-

1 This notice of motion is taken out to recall the order dated 23rd June, 2014 dismissing the suit as nobody had appeared for the plaintiff on that date and to restore the same to file.

2 The defendant has filed affidavit in reply opposing the notice of motion. Mr. Engineer, counsel for the defendant states that there is no explanation given as to why nobody appeared for the plaintiff on that date.

3 In my view, the explanation given in paragraphs 5 and 6 of the affidavit in support is sufficient enough to condone the absence and restore the suit to file. Moreover in this suit the defendant has

been granted conditional leave to defend and the defendant has deposited the amount, which has been withdrawn by the plaintiff against a bank guarantee.

4 Therefore, in the interest of justice, in my view, the suit is required to be restored.

5 The suit is restored to file. The notice of motion is allowed and accordingly disposed of in terms of prayer clauses – (a) and (b).

(K.R.SHRIRAM,J)