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

**NOTICE OF MOTION NO. 1450 OF 2012
IN
SUMMARY SUIT NO. 1450 OF 2012**

Deepak Govind Dhupkar	...Applicant
In the matter between	
Mahendra Mehta	...Plaintiff
VS	
Deepak Govind Dhupkar	...Defendant

.....

None for the Plaintiff
Mr G.N.Salunkhe a/w Umesh Kurund for the Defendant.

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**CORAM : S.C. GUPTE, J.
JANUARY 27, 2016**

P.C. :

This Notice of Motion is taken out for setting aside an ex-parte decree passed against the Defendant. The grounds for setting aside the ex-parte decree are that the writ of summons was not duly served on the Defendant and that without such service, the impugned decree was passed. There is a delay of about 245 days in filing the present Notice of Motion. It is submitted in the affidavit in support of the Notice of Motion that the Defendant was never served with the writ of summons and that the Defendant learnt about the ex-parte decree only after the notice of execution was received. The delay, in the premises, is adequately explained. There is no reply filed by the original Plaintiff to the present Notice of Motion. No issue has been joined with the averment that the writ of summons was not duly served on the Defendant. The delay, in the premises, is condoned. The Motion is made absolute in terms of prayer clause (b). The Summary Suit is restored on board. Learned Counsel for the Defendant / Applicant waives service of writ of summons. The Defendant shall file appearance within a period of 10 days from today.

(S.C.GUPTE J.)