

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

**NOTICE OF MOTION NO.2919 OF 2008
CHAMBER SUMMONS NO.1255 OF 2008
IN
SUIT NO.292 OF 1970**

Shyamsunder Mahabirprasad Nemani & Ors.)....Plaintiffs

V/s.

Mohanlal Thakersidas Nemani & Ors.)....Defendants

None for plaintiffs.

Mr.Kamlesh P.Mali for defendant no.10 and for applicant in Notice of Motion No.2919/2008.

**CORAM : K.R.SHRIRAM,J
DATE : 10.8.2016**

P.C.:-

1 This Notice of Motion is filed by defendant no.10 for the restoration of the suit which was dismissed pursuant to an order dated 29.10.2007 read with order dated 15.1.2008. First of all such a Notice of Motion by the defendants is not maintainable. The plaintiffs were directed to file the original documents to proceed with the trial of the suit, which the plaintiffs refused. In the order dated 29.10.2007 time was granted upto 20.11.2007 to file the original documents. On 15.1.2008 this court passed an order stating that the plaintiffs who are present in court in person, tried to file the documents along with list of documents but since the suit had got dismissed by the self operative order dated 29.10.2007, the documents cannot be taken on record and the suit to be treated as dismissed.

2 Today's application is not filed by the plaintiffs but by the defendant no.10 who claims that he was minor when the suit was instituted. The date on which suit came to be dismissed, the applicant was admittedly a major. There is no explanation putforth as to why applicant was not present in court on 29.10.2007 or on 15.1.2008. If the applicant wishes to obtain any reliefs, he should have filed an independent suit. Therefore, Notice of Motion stands dismissed.

3 In view of the above order, Chamber summons no.1255 of 2008 also does not survive. The same stands dismissed.

(K.R.SHRIRAM,J)