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

**NOTICE OF MOTION NO. 1357 OF 2014
IN
SUIT NO. 1376 OF 2006**

Mrs Quinie Miranda & Anr.	...Applicants.
In the matter between	
Carmo D'souza	...Plaintiff
VS	
Mrs Aruna Bhaskar Shetty & Anr.	...Defendants
And	
John D'Souza & Anr.	...Proposed Defendants

.....
Mr S.K.Jain i/b S.K.Jain & Associates for the Applicant/ Proposed Plaintiff.
Mr Jash B. Vyas for Defendant Nos.1 and 2, already on record.
.....

CORAM : S.C. GUPTE, J.

JANUARY 05, 2016

P.C. :

This Motion is taken out by the Applicants who claim to be the heirs and legal representatives of the deceased Plaintiff. The motion seeks to set aside an order dated 23 June 2014 dismissing the suit for want of prosecution. The Motion also seeks deletion of the Plaintiff and impleadment of the Applicants as Plaintiffs in his place and addition of two Respondents as proposed Defendant Nos.3 and 4 to the suit with consequential amendments in the body of the plaint. This suit, which seeks an order for cancellation of a conveyance purportedly executed by the original Plaintiff in favour of Defendant Nos.1 and 2, was dismissed for default on 23 June 2014. It is the case of the Applicants that the original Plaintiff became seriously ill and was hospitalized on or about 28 December 2013; that though he was subsequently discharged from the hospital, he did not fully recover and his movements were severely restricted; and that he in fact breathed his last on 27 June 2014, i.e. within four days of dismissal of the suit. It is submitted that due to his continuous illness at the relevant time, he

could neither follow up the matter himself nor communicate with to his lawyer for following up the proceedings in the suit and in the premises, the suit came to be dismissed on 23 June 2014. This position is not seriously contested by Defendant Nos.1 and 2. A reasonable excuse is, accordingly, made out for the absence of the original Plaintiff on the date the suit was dismissed for want of prosecution. There is no dispute that the deceased original Plaintiff was a bachelor and that the Applicants as well as proposed Defendant Nos.3 and 4 are the only heirs and legal representatives of the deceased Plaintiff. In their reply to the Notice of Motion, all that Defendant Nos.1 and 2 submit is that the original Plaintiff bequeathed his entire belongings to his four nephews and nieces, i.e. children of his younger brother Joseph D'souza and that he left nothing to the Applicants or to the proposed Defendant Nos.3 and 4. That is a matter of merits, which will be determined in the course of the trial. As of now, the Applicants have clearly made out a case that they are the heirs and legal representatives of the original Plaintiff, entitled to prosecute the present suit after his death. Accordingly, Notice of Motion is made absolute in terms of prayer clauses (a) to (d). There shall be no order as to costs. The amendment to the plaint to be carried out within a period of four weeks from today.

(S.C.GUPTE J.)

CERTIFICATE

Certified to be true and correct copy of the original signed
Judgment/ Order.