

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1217/2017
WITH
NOTICE OF MOTION NO.606/2014
IN
SUIT NO.383/2014

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. H. V. Kumarswami for the applicant / plaintiff

CORAM : K. K. TATED, J.
DATE : AUGUST 10, 2017

P.C.:

1. Heard. None for the defendant though duly served.

2. The learned counsel for the applicant submits that he has already served the defendant with a copy of the Notice of Motion as well as Affidavit-in-support of the Notice of Motion. He undertakes to file an Affidavit of service within a week. The statement is accepted.

3. The Notice of Motion is for restoration of Notice of Motion No.606/2014 which stood dismissed for non prosecution by order dated

29.06.2017 and also for restoration of suit No.386/2014 which stood dismissed for non prosecution by order dated 03.07.2017 passed by this court (Coram : Shri K. R. Shriram,J.).

4. The learned counsel for the applicant submits that during that period, the applicant's advocate was not keeping well. To that effect, the learned counsel for the applicant filed affidavit dated 10.07.2017. In paragraph 5 thereof, these facts are stated. The learned counsel for the applicant submits that in the interest of justice, this Hon'ble Court be pleased to recall both the orders and restore the Notice of Motion as well as the suit on file for hearing on merits.

5. Considering the submissions made by the learned counsel for the applicant, paragraph 5 of affidavit in support of the Notice of Motion and also in view of the fact that because of the mistake on the part of an advocate, a litigant should not suffer, I am satisfied that the applicant has made out a case for allowing the Notice of Motion.

6. Hence, following order is passed:

a. Order dated 03.07.2017 passed in Suit No.383/2014 is recalled.

- b. Suit No.383/2014 is restored to file for hearing on merits.
- c. Order dated 29.06.2017 passed in Notice of Motion No.606/2014 is recalled.
- d. Notice of Motion No.606/2014 is restored to file for hearing on merits.
- e. The learned counsel for the applicant is directed to inform either to the respondent or their advocate in writing about restoration of the suit as well as the Notice of Motion and file an Affidavit of service to that effect.
- f. The Notice of Motion stands disposed of accordingly.

JUDGE