

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

**CHAMBER SUMMONS NO.876 OF 2012  
IN  
NOTICE NO.1624 OF 2011  
IN  
EXECUTION APPLICATION NO.856 OF 2011**

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|-----------------------------------------------------------------------------------------------------------|---------------------------|
| 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. Karansingh Rajput i/b. Mr. Rakesh Bhasin for the applicants / claimants.

Mr. Anand Mishra a/w. Mr. Sushil Upadhyay i/b. Mr. A. M. Sarogi for respondent.

**CORAM : K. K. TATED, J.  
DATED : 21/09/2017**

**P.C.:**

1. Heard learned counsel for the parties.

2. This chamber summons is preferred by the claimant for restoration of notice no.1624 of 2011 which was dismissed for non prosecution by order dated 21<sup>st</sup> March, 2012. The learned Counsel for the applicants submits that inadvertently it remain on the part of the advocate to remain present when the matter was called out. He submits that the applicant have chances of success in the present matter. He

submits that in the present proceeding, the applicants have to recover more than 21 lakhs as per execution application out of that some amount is already paid by the respondent as per the award dated 15<sup>th</sup> October, 2001. He submits that if notice is not restored, irreparable loss will cause to them. He submits that in the interest of justice, this Hon'ble Court be pleased to recall order dated 21<sup>st</sup> March, 2012 and hear the matter on merit.

3. On the other hand, learned Counsel Mr. Mishra appearing for the respondent filed affidavit in reply dated 23<sup>rd</sup> August, 2012. Same taken on record. Learned Counsel for the respondent submits that the applicants have not shown sufficient cause for restoration of matter and delay in preferring chamber summons, hence the chamber summons to be dismissed with costs.

4. I heard both sides at length. It is to be noted that because of mistake on the part of the advocate, litigant should not suffer. Considering this fact and reasons disclosed by the applicants in his affidavit in support of chamber summons, I am satisfied that the applicants have made out case for allowing this chamber summons, but at the same time they have to pay costs of Rs.25,000/- to the respondent. Hence, I pass following order;

**:: ORDER ::**

(i) Delay in preferring chamber summons is condoned.

(ii) Order dated 21<sup>st</sup> March, 2012 passed by this Court in notice no.1624 of 2012 is restored on file for hearing on merits.

(iii) The applicant to pay costs of Rs.25,000/- to the respondent or to their advocate within three weeks from today. Failing which chamber summons shall stand dismissed without referring back to the Court.

(iv) If costs are paid, the applicant to place on record receipt to that effect within stipulated time as stated hereinabove.

(iv) Chamber Summons is disposed of in the aforesaid terms.

**(K.K.TATED, J.)**