

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

**NOTICE OF MOTION NO.2493 OF 2016
IN
NOTICE OF MOTION NO.2491 OF 2016
IN
APPEAL (L) NO.166 OF 2016**

Messrs Correa Builders & Ors.

.... Applicants/
Appellants

versus

Vilas A. Bharate & Ors.

... Respondents

.....

- Ms.Sandhya Nanavare i/b. M. Janardhanan, Advocate for the Applicant/Appellant.
- Ms.Kiran Mishra i/b. K.P. Tiwari & Co., Advocate for the Respondents.

**CORAM : R. M. SAVANT &
SARANG V. KOTWAL, JJ.
DATE : 15th NOVEMBER, 2017.**

P.C. :

1. The above Notice of Motion No.2491/16 is filed for restoration of Appeal (L) No.166/16, which has stood dismissed for non-prosecution under Rule 986 of the Original Side Rules. For the reasons stated in the Affidavit in Support of the Notice of Motion, the same is allowed. Resultantly the above Appeal is restored to file.

2. The above Notice of Motion No.2493/16 is taken up for hearing with the consent of the learned counsel for the parties. The above Notice of Motion has been filed for condonation of delay of 60 days in filing the Appeal, the reasons for which are mentioned in the affidavit in support of the Notice of Motion. Before considering the Notice of Motion for delay, we deem it appropriate to consider whether there is any merit in the above Appeal.
3. The above Appeal is filed against the order dated 14/03/2016 passed by a learned Single Judge of this Court, by which order the Notice of Motion bearing No.1474/13 filed by the Applicants/original Plaintiffs, for restoration of the suit, came to be allowed and resultantly the suit came to be restored on the condition of payment of costs of Rs.2,00,000/- to the Defendants within the period stipulated in the said order dated 14/03/2016.
4. It is an undisputed position that the amount has been

paid over to the Appellants/Original Defendants. It seems that the suit is set down for trial in the City Civil Court. In our view, having regard to the nature of the order passed, which can be said to be discretionary, we do not deem it appropriate to interfere with the said discretion. We therefore do not find any merit in the above Appeal. Hence no useful purpose would be served by condoning the said delay of 60 days in filing the Appeal. Both the Notice of Motion No.2493/16 and the above Appeal to accordingly stand dismissed. In view of the aforesaid, Notice of Motion No.2492/16 to also stand disposed of.

(SARANG V. KOTWAL, J.)

(R. M. SAVANT, J.)