

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
TESTAMENTARY AND INTESTATE JURISDICTION**

**NOTICE OF MOTION NO.2 OF 2016  
IN  
TESTAMENTARY SUIT NO.2 OF 2006  
IN  
TESTAMENTARY PETITION NO.377 OF 2004**

Satishkumar Lalmani Upadhyay ....Applicant/Plaintiff

Vs.

Saritadevi Rajesh Chaturvedi and Anr. ....Defendants

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Mr. Rajendra K. Yadav for the plaintiff/applicant.

Mr. Sandeep Mahadik i/b. Mr. Manojkumar Upadhyay for the defendants.

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

**DATE : 25<sup>th</sup> JANUARY, 2017**

**P.C.:**

1           This notice of motion is for restoration of the suit that came to be dismissed vide a order dated 16<sup>th</sup> February, 2015. Mr. Mahadik, counsel appearing for the defendants opposes the chamber summons and submits that there is no proper explanation given as to why the plaintiff did not appear on 2<sup>nd</sup> February, 2015 and 16<sup>th</sup> February, 2015.

2           It is stated in the affidavit in support that the earlier advocate did not inform about the matter being listed on these two dates because of which the earlier advocate has also been given a discharge. From the affidavit in support it also appears that the suit has proceeded upto the stage of trial where the cross examination of PW-1 is also began. In the meanwhile, the defendant no.2 expired and the chamber summons to bring

on record the legal heirs of defendant no.2 is also pending.

3           Considering the facts and circumstances of the case, in my view, interest of justice requires that the order of dismissal passed on 16<sup>th</sup> February, 2015 be recalled and is hereby recalled and the suit is restored to file.

4           The notice of motion accordingly stands disposed.

**(K.R. SHRIRAM, J.)**