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

NOTICE OF MOTION (L) NO. 2313 OF 2017
IN
SUMMONS FOR JUDGMENT NO. 9 OF 2017
IN
SUMMARY SUIT NO. 2956 OF 2004
WITH
SUMMARY SUIT NO. 2956 OF 2004

The Board of Trustees of BES&T
Undertaking & Anr.

...Applicants/Plaintiffs

vs

M.P.Madhya Kshetra Vidyut Vitran Co.
Ltd. & Ors.

...Defendants

.....

Ms Radha H. Bhandari i/b M.V.Kini & Co. for the Applicants/
Plaintiffs

Mr Netaji Gawade i/b Sanjay Udeshi & Co. for Defendant No.1.

Ms Farhana Khan i/b Kalpesh J. Nansi for Defendant No.4.

.....

CORAM : **B.P.COLABAWALLA, J.**
NOVEMBER 17, 2017.

P.C. :

Though the suit was shown on board for directions today, it was brought to my notice by the learned advocate appearing for the Applicants / Plaintiffs that Summons for Judgment No.9 of 2017 was dismissed for default on 7th August, 2017. To set aside that dismissal order the Applicants /

Plaintiffs have filed the above Notice of Motion. Though the Notice of Motion is not on board today, by consent of parties the same is taken on board.

2 By this Notice of Motion, the Applicants/ Plaintiffs seek a prayer to recall and set aside the dismissal order dated 7th August, 2017 passed in Summons for Judgment No. 9 of 2017 as well as for restoration of said Summons for Judgment.

3 Having heard the learned advocate appearing for Defendant No.1 as well as Defendant No.4, I am of the view that sufficient ground is made out for setting aside the order of dismissal. However, considering that the dismissal order is dated 7th August, 2017 and this Notice of Motion has been filed only Yesterday, the dismissal order dated 7th August, 2017 is set aside and the Summons for Judgment is restored to file subject to payment of costs of Rs.10,000/- each to Defendant No.1 as well as Defendant No.4 within a period of two weeks from today.

4 Needless to clarify that if the costs are not paid to Defendant No.1 as well as Defendant No.4 as stipulated above

within the stipulated time, this Notice of Motion shall stand dismissed without further reference to the Court.

5 If the costs are paid as directed earlier, the Summons for Judgment shall stand restored to file and shall be listed on board on 8th December, 2017 for hearing.

6 I am informed that Defendant No.4 had already filed its affidavit in reply and Defendant No.1 shall file his affidavit in reply in the Registry within a period of one week from today and serve a copy of the same on the advocates for the Plaintiffs.

7 The Notice of Motion is disposed of in the aforesaid terms.

(B. P. COLABAWALLA, J.)