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

NOTICE OF MOTION NO.2913 OF 2016
IN
SUIT NO.348 OF 2014

Wochkardt Ltd.	...Plaintiff
V/s.	
Alchemist Ltd.	...Defendant

Mr.Ashish Mehta with Mr.Pratik Jhaveri and Ms.Monica Haseja i/b
Mr.Ashish Mehta for the Plaintiff.

Mr.Vivek Sharma for the Defendant.

CORAM : R.D. DHANUKA, J.
DATE : 5TH JUNE, 2017.

P.C. :-

1. By this notice of motion the applicant (original plaintiff) seeks restoration of the Suit No.348 of 2014 along with order dated 27th February, 2014 passed by this Court in Notice of Motion (Lodging) No.2303 of 2013 and seeks condonation of delay in filing the notice of motion. No affidavit in reply is filed by the defendant.
2. I have learned learned counsel for the plaintiff and the defendant and have perused the reasons recorded in the affidavit in support of the notice of motion.
3. Learned counsel appearing for the defendant states that if

this Court restores the suit, the applicant shall be directed to pay exemplary costs for not remaining present before this Court on 25th October, 2016 when the suit was on board.

4. Mr.Mehta, learned counsel appearing for the applicant submits that the applicant could not remain present due to unavoidable circumstances set out in the affidavit in support of the notice of motion. He however, has no objection if this Court imposes reasonable costs upon his client. The statement is accepted.

5. In my view, the applicant has though recorded the reasons in the affidavit in support of the notice of motion, the delay is not fully and satisfactorily explained. However, no affidavit in reply has been filed by the defendant. I am therefore, of the view that the suit as well as the interim order passed by this Court on 27th February, 2014 can be restored however on the condition that the applicant pays costs of Rs.10,000/- to the defendant within one week from today.

6. I therefore, pass the following order :-

a). The order dated 25th October, 2016 passed by this Court is recalled and the interim order dated 27th February, 2014 passed by this Court is restored to file on the condition that the applicant pays Rs.10,000/- to the defendant within one week from today.

b). The notice of motion is made absolute in terms of prayer clauses (a) to (d) on the aforesaid condition.

7. Learned counsel for the defendant states that the written statement would be filed by his client within four weeks from the date of receipt of payment of costs and a copy thereof shall be served upon the plaintiff's advocate simultaneously. Statement is accepted.

(R.D. DHANUKA, J.)