

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

**NOTICE OF MOTION NO.2064 OF 2015  
IN  
CHAMBER SUMMONS (L) NO.470 OF 2015  
IN  
SUIT NO.3015 OF 1996**

|                                                                                                              |                           |
|--------------------------------------------------------------------------------------------------------------|---------------------------|
| Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Prothonotary's orders | Court's or Judge's orders |
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Mr.Gauraj Shah i/b M/s.Dhanuka and Partners for the plaintiff

Mr.Rajesh Kachare a/w Mr.Amit Potnis i/b M/s.Tamhane and Co. for the legal heirs of defendant no.1

Ms.Rasika Bagkar i/b M/s.Bagkar and Co. for the defendant no.2

**CORAM : K. K. TATED, J.  
DATE : SEPTEMBER 8, 2017**

**P.C.:**

1. Heard.
2. The learned counsel for the applicant submits that defendant no.1 expired on 24.10.2007. Therefore, there is no question of service of present Notice of Motion on defendant no.1. The learned counsel for the applicant submits that they preferred the present Notice of

Motion for restoration of Chamber Summons (L) No.470 of 2015 which stand dismissed for non-removal of office objections as per order dated 15.9.2017 passed by learned Prothonotary and Senior Master.

3. The learned counsel for the applicant submits that it remained on the part of the earlier Advocate to remove office objections. He submits that they filed their Vakalatnama and immediately filed praecipe dated 17.10.2015 for extension of time to remove office objections. He submits that at that time they learnt that Chamber Summons already stand dismissed in view of conditional order dated 15.9.2017. Hence, they preferred the present Notice of Motion for restoration of Chamber Summons. He submits that because of mistake on the part of advocate, litigant should not suffer. He submits that they have good chance of success in the present Chamber Summons. Hence, in the interest of Justice, this Hon'ble Court be pleased to allow the present Notice of Motion and restore the Chamber Summons (L) No.470 of 2015. He further submits that the Prothonotary and Senior Master has raised objection in Chamber Summons (L) No.470 of 2015 about the service on dead person. Hence, that objection should be dispensed with.

4. On the other hand, the learned counsel for the defendant no.2 opposed the present Notice of

Motion.

5. Notice of Motion was duly served on defendant no.2. There is no Affidavit-in-Reply to oppose the present Notice of Motion.

6. Considering the submissions made by the learned counsel for the plaintiff and because of mistake on the part of earlier advocate, applicant plaintiff should not suffer, I am satisfied that applicant has made out a case for allowing the Notice of Motion. Hence, following order is passed:

a) Order dated 15.9.2017 passed by Prothonotary and Senior Master in Chamber Summons (L) No.470 of 2015 is set aside.

b) Chamber Summons (L) No.470 of 2015 is restored on file.

c) Objection about service on defendant no.1 in Chamber Summons (L) No.470 of 2015 is dispensed with.

d) Notice of Motion stands disposed of accordingly.

e) The objection about delay be satisfied by the applicant before this court.

f) Liberty granted to the defendant no.2 to file their Affidavit-in-Reply in Chamber Summons No.97 of 2016 in the Registry with copy to other side.

g) Notice of Motion stands disposed of accordingly.

h) Chamber Summons (L) No.470 of 2015 and Chamber Summons No.97 of 2016 to be placed on board for hearing on 15.9.2017.

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