

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

**NOTICE OF MOTION NO.488 OF 2016
IN
SUIT NO.718 OF 1997**

Ayodhyanath H.Kapoor (since deceased))
Dolly Ayodhyanath Kapur)....Applicant

IN THE MATTER BETWEEN :-

Anil B.Kapur)....Plaintiff

V/s.

Dolly Ayodhyanath Kapur @ Harsha)
Deepak Tindwani & Ors.)....Defendants

Mr.Kunal V.Phoole i/by Nitin H.Shukla for plaintiff.

Mr.P.M.Shah a/w Ms.Meeta Shah for defendants.

**CORAM : K.R.SHRIRAM,J
DATE : 7.8.2017**

P.C.:-

1 This Notice of Motion is taken out by the defendants to recall the order passed by the Prothonotary & Senior Master, High Court, Bombay on 10.12.2003 transferring the suit to the list of undefended suit. The status of the suit is it is yet to be disposed as undefended suit.

2 The defendants pray that delay be condoned and written statement be taken on record. From the record & proceedings it appears that the defendants had lodged their written statement

affirmed on 17.10.2009 but since they found later that registry has not taken the written statement on record, have filed this Notice of Motion in December-2015.

3 I have considered the affidavit in support. Since the written statement has already been declared way back on 17.10.2009 and the suit is yet to be taken up as undefended suit, I am inclined to allow the Notice of Motion.

Notice of Motion accordingly allowed in terms of prayer clauses-(a), (b) & (c) and stands disposed.

4 At the same time, the explanation for not filing the written statement for almost 12 years i.e., between 1997 and 2009 is not satisfactory. In my view, for that, the defendants should be put to terms. Defendants to give a donation of Rs.10,000/- to Mumbai Police Welfare Fund and this amount to be paid within four weeks from today.

5 Suit be listed for issues on 22.8.2017 at 3.00 P.M. at which time, parties to come with agreed draft issues and a separate list of issues on which they are unable to agree.

(K.R.SHRIRAM,J)