

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

**NOTICE OF MOTION NO. 551 OF 2015
WITH
NOTICE OF MOTION NO. 2854 OF 2016
IN
SUIT NO. 315 OF 2015
WITH
CHAMBER SUMMONS NO. 548 OF 2017**

Parvati Ramchandra Shirke & Ors.

...Plaintiffs

vs

Kamal Ramchandra Shirke & Ors.

...Defendants

.....

Dr. Abhinav Chandrachud a/w Mr. Tushar Dahibawkar & Ms. Pooja Kharat
i/b M/s. Dahibawkar & Co. for Plaintiffs/Applicants in CHS/548/2017.

Ms. Minal V Chavan i/b Ms. Sheetal Malvankar for Defendant No.
2/Applicant in NMS No. 2854/2016.

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CORAM : S.C. GUPTE, J.

DATED : 22 FEBRUARY 2018

P.C. :

1. Heard learned counsel for the Plaintiffs in Notice of Motion No. 2854 of 2016 which is for condonation of delay in filing a written statement. By an order dated 4th August, 2015, the Suit is already transferred by the Prothonotary and Senior Master of this Court to the list of "Undefended Suits". There is a delay of 478 days in filing the written statement. The

affidavit filed in support of the Notice of Motion makes out a case, viz lack of finance for engaging an advocate, which resulted in delay in filing the written statement. It is submitted that the Applicant (Original Defendant no. 2) used to personally come to the Court for attending the matter but due to personal difficulties could not follow up the matter.

2. Considering the averments made in support of the Notice of Motion and the opposition of the Plaintiff/Respondent, this Court is of the view that it would be in the interest of justice to recall the order transferring the suit to the list of undefended suits and condone the delay and allow defendant no. 2 to submit her written statement, which is ready and which is being tendered in Court today, subject to payment of costs.

3. Accordingly, the Notice of Motion is allowed in terms of prayer clauses (a) (b) & (c). The written statement tendered by Defendant no. 2 is taken on record. A copy is served across the Bar on the Plaintiffs' advocate. Defendant no. 2 shall pay costs quantified at Rs. 15,000/- to the Plaintiffs. Such costs shall be paid within a period of two weeks from today.

4. Chamber Summons No. 548 of 2017, which is not on board, is called out by consent of Counsel and taken up for hearing. This chamber summons is taken out by Defendant no. 2 for deleting the name of defendant no. 1, who has deceased. The legal heirs of the deceased are already on record.

5. The Chamber Summons is allowed in terms of the prayer clause (a). Amendment to be carried out within two weeks from today. Re-verification is dispensed with.

(S.C. GUPTE, J.)