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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.**

**NOTICE OF MOTION NO. 684 OF 2016
IN
SUIT NO. 608 OF 2014**

Mrs Wahidunnisa Abdul Wahab & Anr. ...Applicants/Plaintiffs
VS
Mr Abdul Subhan & Ors. ...Defendants

.....
Mr Mayuresh Borkar for the Applicants/Plaintiffs
Mr J. Ansari I/b Shamim & Co. for Defendant Nos. 6 to 9.
.....

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**CORAM : B. P. COLABAWALLA, J.
JULY 12, 2019.**

P.C. :

This Notice of Motion has been filed seeking to set aside the order dated 9th April, 2015 passed by the learned Prothonotary and Senior Master of this Court dismissing the above suit for non-compliance of serving the defendants. There is delay of 315 days in filing the present Notice of Motion.

2 The learned advocate appearing on behalf of the applicants / plaintiffs states that all the defendants have been served and he shall file an affidavit proving the service within a period of two weeks from today. The said statement is accepted as an undertaking given to this Court.

3 I must note, on the previous occasion defendant Nos.4 and
5 as well as defendant Nos.6 to 9 were represented through
advocates. Considering the averments made in the affidavit in
support, the Notice of Motion is allowed in terms of prayer clauses (a)
and (b) which read thus-

- “(a) That the delay of 315 days in filing the present Notice of Motion be
condoned;
- (b) That the order dated 9th April, 2015 passed by the Ld. Prothonotary
and Senior Master dismissing the above suit may be set aside.”

4 The condition precedent for allowing this Notice of Motion
is that, the applicants/ plaintiffs shall pay costs of Rs.50,000/- to the
Tata Memorial Hospital, Mumbai within a period of two weeks from
today and a receipt showing the compliance of the payment of costs
shall be filed on the record of this Court.

5 It is clarified that if the costs are not paid within the
stipulated period, this Notice of Motion shall stand dismissed without
further reference to the Court. The Notice of Motion is disposed of in
the aforesaid terms.

(B.P.COLABAWALLA, J.)