

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

**NOTICE OF MOTION NO. 1526 OF 2019
IN
SUIT NO. 3768 OF 1996**

Jinesh Hitesh Shah	...	Applicant/Plaintiff
Versus		
Dinesh Sumatilal Shah & Ors.	...	Defendants

Mr. Aditya Shiralkar a/w Ms. Nishi Abuwala i/b Thakore Jariwala & Associates for the Plaintiff.

Mr. Delaney Sylvester i/b Dhru & Co. for Defendant Nos.15 to 18.

Mr. Yogesh Gaikwad i/b Ms. Neha Bhatt for Defendant Nos.20 to 23.

CORAM : R.I. CHAGLA, J.

DATED : 7th AUGUST, 2019.

P.C. :

1 This Notice of Motion is seeking recall of the order dated 26.10.2018 passed by this Court dismissing the Suit for non-prosecution. The Notice of Motion seeks restoration of the above Suit after condonation of the delay of 204 days in taking out the present proceedings. It is stated by the learned Counsel for the Applicant that the Suit had been adjourned sine-die, by order dated 23.02.2015 on account of the First Appeal having been filed which pertains to subject matter of the Suit. He states that the Suit on 26.10.2018 had come on board when it was dismissed for non-

prosecution and the Advocate had inadvertently missed noticing the listing of the Suit on 26.10.2018. Hence, the Advocate for the Applicant could not remain present when the matter was called and accordingly, was dismissed.

2 It is stated in the affidavit in support of the Notice of Motion that the Applicant has diligently prosecuted the above Suit and that the dismissal of the Suit on 26.10.2018 was passed in circumstances which were beyond the control of the Applicant. Accordingly, he has submitted that the Notice of Motion be allowed and the Suit is restored.

3 Considering the averments in the affidavit in support of the Notice of Motion, I am satisfied that justifiable reason has been given by the Applicant for default in appearance on 26.10.2018 when the matter had been dismissed for non-prosecution. It appears that due to default on the part of the Advocate's Clerk that the matter had been dismissed. The Applicant cannot be made to suffer on account of the default on the part of the Advocate. Accordingly, I am satisfied with the averments in the affidavit in support of Notice of Motion and Notice of Motion is made absolute in terms of prayer clauses (a) and (b).

4 Notice of Motion is disposed of in the above terms.

(R.I. CHAGLA, J.)