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

**NOTICE OF MOTION NO. 2304 OF 2016
IN
SUIT NO. 773 OF 2014**

M/s J.K.N.Enterprises,	...Applicant
In the matter between	
Moosabhai Ahmed Maniyar	...Plaintiff
vs	
Mrs Aiysha Yusuf Laher & Ors.	...Defendants

.....
Mr Prashant V. Tikare for the Plaintiff
Mr Anand A. Pande i/b Mr Ashok Pande for the applicant / Defendant
No.4.

.....
**CORAM : B. P. COLABAWALLA, J.
SEPTEMBER 26, 2019.**

P.C.:

This Notice of Motion has been filed by the applicant / defendant No.4 seeking condonation of delay in filing its Written Statement and seeking a direction that the same be taken on the record of this Court. The prayer is also sought that the order dated 28th August, 2015 passed by the learned Prothonotary and Senior Master of this Court be set aside. By this order the suit against the applicant / defendant No.4 was transferred to the list of undefended suit. The learned advocate appearing for defendant No.4 has stated that the Written Statement is already ready and was affirmed on 22nd

August, 2016. He, therefore, prays that defendant No.4 be permitted to file its Written Statement. The learned advocate appearing on behalf of the plaintiff fairly states that the plaintiff has no objection if the Written Statement of defendant No.4 is taken on record.

2 In view of the aforesaid consensus, the Notice of Motion is allowed in terms of prayer clauses (a), (b) and (c) which reads thus-

- “(a) That delay in filing the Written Statement by defendant No.4 be condoned;
- (b) That defendant No.4 be permitted to file the Written Statement, after condoning the delay in filing the Written Statement;
- (c) That the order dated 28.08.2015 passed by the learned Prothonotary and Senior Master, High Court (O.S.) Bombay, in Suit No.773 of 2014 be set aside.”

3 This order is condition precedent that the applicant / defendant No.4 shall pay costs of Rs.25,000/- to the Tata Memorial Hospital, Mumbai within a period of two weeks from today and filing a receipt on the record of this Court evidencing the payment of the aforesaid costs. Needless to clarify that if the costs are not paid within the period ordered earlier, the Notice of Motion shall stand dismissed without further reference to the Court.

4 The applicant / Defendant No.4 shall file its Written Statement in the Registry within a period of one week from paying the costs and serve a copy of the Written Statement on the advocates for the plaintiff.

5 All parties including the Tata Memorial Hospital, Mumbai are directed to act on an authenticated copy of this order.

6 The Notice of Motion is accordingly disposed of.

(B. P. COLABAWALLA, J.)