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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 870 OF 2017
IN
SUIT NO. 2234 OF 2007

Firoze Jainuddin Mantri ...Plaintiff
Versus
Zarina W/o Ahmed Izzat Mohammed Hashim ...Defendants
Dada & Ors

Mr JK Shah, for the Plaintiff/Applicant.
Ms Ayesha Damania, with Aditya Bhatt, I/b Sanjay Udeshi & Co.,
for Defendants Nos. 1 to 4.

CORAM: G.S. PATEL, J
DATED: 4th February 2019

PC:-

1. The suit was dismissed for default on 18th August 2016 because the Plaintiff and his Advocate were absent. There can be no dispute that not only have issues been framed, but the Plaintiff has also filed his Evidence Affidavit. There is no delay because the Notice of Motion for restoration was filed six days after the order of dismissal.

2. Although there is a substantial Affidavit in Reply, this speaks more to the merits of the suit itself rather than furnishing any ground for refusing restoration.

3. I can see no reason why the absence of an Advocate on one day should prejudice the Plaintiff so completely.
4. The Notice of Motion is made absolute in terms of prayer clauses (a) and (b). There will be no order as to costs.
5. All contentions of the Defendants are kept open.
6. Since the Defendants express an anxiety about the delay, list the matter for marking the Plaintiff's documents on 15th March 2019.
7. I am making it clear that if the suit is dismissed once more in default, it will not be restored thereafter under any circumstances whatsoever.

(G. S. PATEL, J)