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

Dhanappa
I. Koshti

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**NOTICE OF MOTION NO. 335 OF 2017
IN
SUIT NO. 598 OF 2014**

Mr Akshay Chandrakant Mirani ...Applicant
In the matter between
Mrs Heena Kirit Thakkar & Anr. ...Plaintiffs
VS
Rakesh Parashram Purohit & Ors. ...Defendants.

.....

Mr Bhushan Deshmukh a/w Mr Animesh Singh I/b Ms Sheela Mistry
for the Applicant/Plaintiffs
Mr G.S.Kedia for Defendant No.1.
Mr M.G.Agre for defendant Nos.2,7 and 8.
Mr Kevin Gala I/b Ms Urvashi Nayak for defendant Nos.3 to 5, 9 to 15,
18 and 19.

.....

**CORAM : B. P. COLABAWALLA, J.
AUGUST 5, 2019.**

P.C. :

This Notice of Motion has been filed seeking to set aside the order dated 30th July, 2015 passed by the Prothonotary and Senior Master of this Court for non-compliance of Rule 87 of the Bombay High Court (Original Side) Rules, 1980 (for short "Said Rules").

2 When the suit had come up before the Prothonotary and Senior Master of this Court, an order was passed on 30th July, 2015

wherein it was recorded that the plaintiffs were absent and it appeared that no steps were taken by the advocates for the plaintiffs to serve the unserved defendants. In these circumstances, the suit against the unserved defendant Nos.3 to 6 and 9 to 19 was dismissed for non-compliance of Rule 87 of the Said Rules.

3 Today when the matter is called out, I am informed that all the defendants have been duly served. In fact Mr Kevin Gala I/b Ms Urvashi Nayak, has stated before me that he is appearing on behalf of defendant Nos.3, 9, 10 and 19. He has further stated that his instructing advocate shall also be filing her appearance on behalf of defendant Nos.4, 5, 11, 12, 13, 14, 15 and 18 respectively within a period of two weeks from today. The said statement is accepted.

4 Considering that now all the defendants are appearing and also being represented through advocates, the Notice of Motion is allowed in terms of prayer clauses (a), (b) and (c) which reads thus -

- “(a) That this Hon'ble Court be pleased to condone the delay in making this application ;
- (b) That this Hon'ble Court be pleased to set aside the dismissal order dated 30th July, 2016 passed by Prothonotary and Senior Master for non compliance of O.S. Rule 87 in the above matter;

- (c) That this Hon'ble Court be pleased to restore the suit as against the unserved defendants i.e. defendant Nos.3 to 6 and 9 to 19 herein.”

5 As far as prayer clause (d) is concerned, namely, seeking a direction to issue a fresh writ of summons, the same would not survive in view of the fact that all the defendants are now being represented by advocates appearing in this Court.

6 The condition precedent for allowing this Notice of Motion is that the applicant / plaintiff shall pay the costs of Rs.50,000/- to the Tata Memorial Hospital, Mumbai within a period of two weeks from today and file a receipt evidencing the payment of costs, on the record of this Court. Needless to clarify that if the costs are not paid within the stipulated period, the Notice of Motion shall stand dismissed without further reference to this Court. The Notice of Motion is disposed of in the aforesaid terms.

(B.P.COLABAWALLA, J.)