

Mr. Ankit Lohia with Mr. Murari Madekar i/by Madekar and Co., for Applicant.  
Mr. Sham Walve, for Respondents.

**CORAM: AKIL KURESHI &  
S.J. KATHAWALLA, JJ.**

**DATE: 8th JULY, 2019**

P.C.:

1. By the above Notice of Motion, the Applicant / Petitioner seeks condonation of delay of 475 days in filing the Notice of Motion ; recall of the order dated 4th August, 2017 dismissing the Writ Petition ; and to permit the parties to reconstruct the papers and proceedings in Writ Petition No.1018 of 1993. It is submitted by the Advocate for the Applicant / Petitioner that the Writ Petition was dismissed because none appeared for the Petitioner on 4<sup>th</sup> August, 2017 when the Writ Petition was called out for hearing. It is submitted that since the name of the Advocate for the Petitioner was not shown on the cause list/board, he was not aware that the matter was on board and therefore did not attend to the matter. The learned Advocate for the Respondents has pointed out that even on an earlier occasion, the

above Writ Petition was dismissed and at that time, the appearance of the Advocate for the Petitioner was shown. The Petitioner has also caused delay of 475 days in taking out the above Notice of Motion. However, in the interest of justice and in order not to deprive the Petitioner of a hearing on merits, the order dated 4th August, 2017 dismissing the Writ Petition is set aside and the Writ Petition is restored to file, subject to payment of cost of Rs.1,00,000/- to be paid by the Petitioner within one week to Aseema Charitable Trust, a Mumbai based non-government organization, which provides education to children living on the streets or in slums. The parties are also allowed to reconstruct the papers and proceedings of the Writ Petition within a period of four weeks from today. The Notice of Motion is accordingly disposed of.

2. Place the Writ Petition 'For Directions' after four weeks.

**( S.J.KATHAWALLA, J. )**

**( AKIL KURESHI, J. )**