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

**NOTICE OF MOTION NO.1905 OF 2019  
IN  
COMMERCIAL SUIT NO.152 OF 2017**

Mukesh Natvarlal Daya & Ors. ...Plaintiffs

***Versus***

Shree Shubh Enterprise & Ors. ...Defendants

\* \* \* \*

Mr. Kevin Gala i/by Mehul Thakker for Plaintiffs.

\* \* \* \*

**CORAM : R.I. CHAGLA, J.**

**DATED : 30<sup>th</sup> AUGUST, 2022**

**ORDER :**

1. Heard learned counsel appearing for the Plaintiffs.

2. By this Notice of Motion, the Plaintiffs are seeking restoration of captioned Commercial Suit No.152 of 2017 by recall of the order of dismissal of captioned Commercial Suit passed by this Court on 27<sup>th</sup> March 2019.

3. Further relief is sought for the condonation of delay of 74 days in filing of the captioned Commercial Suit by recall of the order passed by this Court on 27<sup>th</sup> March 2019.

4. The Plaintiffs have stated that by the impugned order dated 27<sup>th</sup> March 2019, this Court had noted that on 15<sup>th</sup> January 2019, the Plaintiffs were absent and the Plaintiffs' Notice of Motion came to be dismissed.

5. The Plaintiffs have stated that there was some issue between the Plaintiffs and his erstwhile Advocate, who had not given NOC and due to which the Plaintiffs could not attend the matter and could not appoint another Advocate.

6. On 21<sup>st</sup> January 2019, the Plaintiffs had moved Notice of Motion, Numbered as 904 of 2019 to restore the earlier Notice of Motion and the Court had noted that there had been no mention of the number of the Notice of Motion which was previously filed and the pending matter was kept on board without intimation and the Suit came to be dismissed.

7. The Plaintiffs have stated that they were under the impression that the first Notice of Motion would be restored and then the matter would be listed. Accordingly, the present Interim Application has been filed for restoration of the captioned Commercial Suit as even on date, the Notice of Motion No.904 of 2019 is pending and is not listed.

8. Having considered the averments in the Affidavit in support of the Notice of Motion, I am of the view that the Plaintiffs should not be made to suffer due to default of the erstwhile Advocate. Accordingly, the relief sought for in the Notice of Motion requires to be granted. Hence, the following order is passed:-

- (i). The delay of 74 days in filing the Interim Application for restoration is condoned.
- (ii). The captioned Commercial Suit No.152 of 2017 is restored to file by recall of the order dated 27<sup>th</sup> March 2019.
- (iii). The Notice of Motion is disposed of in the above terms.

(R.I. CHAGLA, J.)