

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.2047 OF 2019
IN
SUIT NO.3350 OF 2009**

Metal Rolling Works Ltd. ... Applicant/Plaintiff
versus
Haresh Kapadia and Ors. ... Defendants

Mr. Prem Gidwani i/by Mr. Arvind Taral, for Plaintiff.
Mr. Prerak A.S.Sharma, for Defendant No.1.
Mr. A.S.Khandeparkar with Mr. Mukund Madekar i/by Madekar and Co., for
Defendant Nos.2 and 4.

CORAM : N.J.JAMADAR, J.

DATE : 28 FEBRUARY 2023

JUDGMENT :

1. The Applicant/Plaintiff has preferred this Application to condone the delay of 1503 days in filing the instant Application to set aside the order dated 1 October 2015, whereby the suit came to be dismissed for want of prosecution and also to set aside the said order and restore the suit to file for adjudication on merits.

2. The Applicant avers, it had engaged Mr. Anirudda P. Sathe, Advocate to represent it in the suit. Mr. Sathe suffered a paralytic stroke and had not been keeping good health. Mr. Sathe's colleague Ms. Lata Wadhwani, who had also filed Vakalatnama along with Mr Sathe, started her independent practice. The Applicant/Plaintiff Company came to be amalgamated with M/s. Lallubhai Amichand Ltd.

3. The Applicant avers, on account of indifferent health of Mr. Sathe and amalgamation of the Applicant Company with M/s. Lallubhai Amichand Ltd., the Applicant lost track of the suit. In the last week of August 2019, upon being enquired by an Advocate who was entrusted with certain criminal matters, the Applicant tried to ascertain the stage of the instant Suit. It transpired that the suit stood dismissed by the Court for want of prosecution by an order dated 1 October 2015. The Applicant claimed to have immediately obtained certified copies of the proceedings and instituted this Interim Application.

4. The Applicant avers, delay of 1503 days in taking out the Application for setting aside the aforesaid order is not intentional. None could appear for the Plaintiff on account of the illness of its former Advocate Mr. Sathe. Therefore, the delay be condoned and the Suit be restored to file, lest the Plaintiff who has a good case on merits would suffer an irreparable loss.

5. An Affidavit in Reply is filed on behalf of Defendant Nos.2 and 4. Defendant Nos.1 and 3 have adopted the contentions in the Affidavit in Reply filed on behalf of Defendant Nos.2 and 4.

6. Defendant Nos.2 and 4 contend that the Application is wholly misconceived. It is malafide and preferred with an ulterior motive to keep vexing the Defendants. There is no cause, much less, sufficient for condonation of huge delay of 1503 days.

7. Defendant Nos.2 and 4 contend that the Application is also based on patently false and untenable grounds. The cause of illness of Mr. Sathe sought to be ascribed as a reason for non-appearance, is false to the knowledge of the Plaintiff. Similarly, the amalgamation of the Plaintiff with M/s. Lallubhai Amichand Ltd., which took place in the year 2012, had no relevance whatsoever with the said non-appearance.

8. Defendant Nos.2 and 4 categorically contend that the cause of purported illness of Mr. Sathe is nothing but a malafide effort to lay the blame entirely at the door of the said Advocate. The statements to that effect are bald and vague. On the contrary, there is material to indicate that Mr. Sathe had been regularly appearing in various courts, immediately before and after the passing of the order dated 1 October 2015 as borne out by the copies of the orders which are annexed to the Affidavit in Reply. The said material completely belies the claim of the Applicant that on account of indifferent health of Mr Sathe, the latter could not appear before the Court when the suit was listed.

9. According to the Defendants, there is no explanation worth its name for the delay of almost 5 years in taking out the Application for setting aside the said order. This inaction assumes significance in the light of the fact that the Plaintiff was prosecuting a number of criminal proceedings against the Defendants. In the absence of any plausible explanation, the delay does not deserve to be condoned.

10. In the wake of the resistance putforth by the Defendants, the Plaintiff has filed an Affidavit of Mr. Sathe, its former Advocate. Since the alleged illness of Mr. Sathe was sought to be urged as a prime reason for non-appearance of the Plaintiff and the dismissal of the suit and also for condonation of delay in taking out the Application for restoration of the Suit, it may be apposite to extract paras 1 and 2 of the Affidavit sworn by Mr. Sathe. They read as under :

“1.I say that I am a practicing Advocate since last for 40 years. I say that I am suffering from a paralytic stroke since the year 2006 and I am still under treatment as my right hand and right leg are badly affected and I can hardly move my right hand, and I have difficulty in walking as well. I am enclosing herewith the Medical Certificate dated 13-01-2023 of Dr. Narayan K. Jeredesai and presently I am under his treatment.....

2. I say that I was appearing in the above Suit for the Plaintiff along with my then colleague Lata Wadhwani, who was subsequently started her individual practice. However, I missed the dates on 31 October 2014 and 1 October 2015 when the suit came to be dismissed. I say that on account of my health, I lost sight of the matter and could not remain present on those days and therefore, the suit came to be dismissed for default.”

11. In the light of the aforesaid pleadings, I have heard Mr. Prem Gidwani, learned Counsel appearing for the Applicant/Plaintiff and Mr. A.S.Khandeparkar, learned Counsel appearing for Defendant Nos.2 and 4. I have also perused the orders passed by this Court on 31 October 2014, and 1 October 2015, whereby the Suit came to be dismissed. On 31 October 2014, none had appeared for the Plaintiff and noting

the presence of the Advocates for the Defendants and the fact that the pleadings were complete, the suit was directed to be listed for framing of issues. In the meanwhile, the parties were directed to file Affidavit of Documents, and complete discovery and inspection.

12. On 1 October 2015, the Court passed the following order :

“On 31 October 2014 when the matter was last listed and directions were passed to file affidavit of documents and complete discovery and inspection, nobody was present for the Plaintiffs. Even today nobody is present for the Plaintiffs. Therefore, the suit is dismissed.”

13. Mr. Gidwani submitted that in order to provide a fair opportunity to the Plaintiff to get the suit adjudicated on merits, it is necessary to set aside the aforesaid order. Mr. Gidwani would submit that it is indisputable that Mr. Sathe had been suffering from illness since long. There was no communication from Mr. Sathe about the stage of the Suit and its dismissal. The Applicant/Plaintiff could not approach the Court for restoration. Thus, delay occurred. The restoration of the Suit, according to Mr. Gidwani, will not cause any prejudice to the Defendants.

14. Mr. Khandeparkar vehemently opposed the prayer for restoration of the Suit. A two-pronged submission was canvassed by Mr. Khandeparkar. First, the Application is based on a false assertion that on account of indifferent health of Mr. Sathe, the learned Advocate could not appear before the Court when the matter was called out. Inviting the attention of the Court to the certified copies of the proceedings in which Mr. Sathe appeared before various forums, prior to and after the

passing of the aforesaid order, Mr. Khandeparkar would urge that the Application does not deserve to be entertained. Secondly, according to Mr. Khandeparkar, there is no explanation as such for the huge and inordinate delay of 1503 days in preferring the application. Such a delay cannot be condoned lightly. Prescription of limitation for filing the application for setting aside of the order of dismissal is with a definite purpose. In the absence of a satisfactory explanation for such a huge delay the Court would not be justified in condoning the delay, urged Mr. Khandeparkar.

15. To bolster up the aforesaid submission, Mr. Khandeparkar placed a strong reliance on a judgment of the Supreme Court in the case of **Majji Sannemma @ Sanyasirao v. Reddy Sridevi and Ors.**¹ In the said case, the Supreme Court declined to condone the delay of 1011 days in preferring an Appeal. The Supreme Court quoted number of judgments in paragraph 7 of the aforesaid judgment and applying the ratio therein to the facts of the said case, came to be conclusion that the High Court erred in condoning a huge delay of 1011 days. Paragraphs 7 and 8 of the said judgment read as under :

“7. 7. At this stage, a few decisions of this Court on delay in filing the appeal are referred to and considered as under :

7.1 In the case of Ramlal, Motilal and Chhotelal (supra), it is observed and held as under :

In construing s. 5 it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the

¹ AIR 2002 SC 332

decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in *Krishna v. Chattappan*, (1890) J.L.R. 13 Mad. 269, "s. 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words 'sufficient cause' receiving a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant."

7.2 In the case of *P.K. Ramachandran* (supra), while refusing to condone the delay of 565 days, it is observed that in the absence of reasonable, satisfactory or even appropriate explanation for seeking condonation of delay, the same is not to be condoned lightly. It is further observed that the law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the courts have no power to extend the period of limitation on equitable grounds. It is further observed that while exercising discretion for condoning the delay, the court has to exercise discretion judiciously.

7.3 In the case of *Pundlik Jalam Patil* (supra), it is observed as under :

"The laws of limitation are founded on public policy. Statutes of limitation are sometimes described as "statutes of peace". An unlimited and perpetual threat of limitation creates insecurity and uncertainty; some kind of limitation is essential for public order. The principle is based on the maxim "interest reipublicae ut sit finis litium", that is, the interest of the State requires that

there should be end to litigation but at the same time laws of limitation are a means to ensure private justice suppressing fraud and perjury, quickening diligence and preventing oppression. The object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy.”

7.4 In the case of Basawaraj (supra), it is observed and held by this Court that the discretion to condone the delay has to be exercised judiciously based on facts and circumstances of each case. It is further observed that the expression “sufficient cause” cannot be liberally interpreted if negligence, inaction or lack of bona fides is attributed to the party. It is further observed that even though limitation may harshly affect rights of a party but it has to be applied with all its rigour when prescribed by statute. It is further observed that in case a party has acted with negligence, lack of bona fides or there is inaction then there cannot be any justified ground for condoning the delay even by imposing conditions. It is observed that each application for condonation of delay has to be decided within the framework laid down by this Court. It is further observed that if courts start condoning delay where no sufficient cause is made out by imposing conditions then that would amount to violation of statutory principles and showing utter disregard to legislature.

7.5 In the case of Pundlik Jalam Patil (supra), it is observed by this Court that the court cannot enquire into belated and stale claims on the ground of equity. Delay defeats equity. The Courts help those who are vigilant and “do not slumber over their rights”.

8. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the averments in the application for condonation of delay, we are of the opinion that as such no explanation much less a sufficient or a satisfactory explanation had been offered by respondent Nos.1 and 2 herein – appellants before the High Court for condonation of

huge delay of 1011 days in preferring the Second Appeal. The High Court is not at all justified in exercising its discretion to condone such a huge delay. The High Court has not exercised the discretion judiciously. The reasoning given by the High Court while condoning huge delay of 1011 days is not germane. Therefore, the High Court has erred in condoning the huge delay of 1011 days in preferring the appeal by respondent Nos.1 and 2 herein – original defendants. Impugned order passed by the High Court is unsustainable both, on law as well as on facts.”

16. Reliance was also placed on a judgment of the Supreme Court in the case of Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and Ors.², wherein the Supreme Court had culled out the principles applicable to an application for condonation of delay. Paragraphs 15 and 16 of the said judgment read thus :

“21. From the aforesaid authorities the principles that can broadly be culled out are:

21.1. (i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.

21.2. (ii) The terms “sufficient cause” should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.

21.3. (iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.

21.4 (iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

2 (2013) 12 SCC 649

21.5 (v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

21.6 (vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

21.7 (vii) The concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play.

21.8 (viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

21.9 (ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

21.10 (x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

21.11 (xi) It is to be borne in mind that no one gets away with fraud, misrepresentation or interpolation by taking recourse to the technicalities of law of limitation.

21.12 (xii) The entire gamut of facts are to be carefully scrutinized and the approach should be based on the paradigm of judicial discretion which is founded on objective reasoning and not on individual perception.

21.13 (xiii) The State or a public body or an entity representing a collective cause should be given some acceptable latitude.

22. To the aforesaid principles we may add some more guidelines taking note of the present day scenario. They are: -

22.1 (a) An application for condonation of delay should be drafted with careful concern and not in a half hazard manner harbouring the notion that the courts

are required to condone delay on the bedrock of the principle that adjudication of a lis on merits is seminal to justice dispensation system.

22.2 (b) An application for condonation of delay should not be dealt with in a routine manner on the base of individual philosophy which is basically subjective.

22.3 (c) Though no precise formula can be laid down regard being had to the concept of judicial discretion, yet a conscious effort for achieving consistency and collegiality of the adjudicatory system should be made as that is the ultimate institutional motto.

22.4 (d) The increasing tendency to perceive delay as a non-serious matter and, hence, lackadaisical propensity can be exhibited in a non-challant manner requires to be curbed, of course, within legal parameters.”

17. Mr. Khandeparkar would urge that the aforesaid judgments are on all four with the facts of the case at hand as the Plaintiff has not furnished an explanation which merits consideration for condonation of delay.

18. It is trite an Application for condonation of delay, be it in preferring an appeal or setting aside of an order of dismissal of a proceeding for want of prosecution, receives a liberal consideration. Overarching principle which informs the exercise of the discretion is that the lis should be decided on merits rather than on technicalities and default, so as to advance the cause of substantive justice.

19. From this standpoint, the term “sufficient cause” is liberally construed. Undoubtedly, an inordinate delay brings in its trail, the consequences like the alteration in the position of the parties and creation of third party rights. An

unexplained and inordinate delay thus puts the Court on guard. Nonetheless, it is emphasised that the length of delay may not be the sole barometer for exercise of the discretion. It is the sufficiency or otherwise of the cause ascribed for the delay which carries significance.

20. In the case at hand, there is material to show that Mr Sathe who had filed Vakalatnama on behalf of the Plaintiff, was suffering from illness. Affidavit of Mr. Sathe, adverted to above, makes this position beyond cavil. Indisputably, Mr. Sathe had suffered a stroke in the year 2006. Yet Mr. Sathe categorically asserts, he had been under treatment and his right hand and right leg are badly affected and he could hardly move his right hand and also faced difficulties in walking. Mr. Sathe further affirmed that he could not appear before the Court on 31 October 2014 and 1 October 2015, the day the suit came to be dismissed, on account of his ill-health, and he lost track of the matter.

21. Mr. Khandeparkar would urge with tenacity that the aforesaid claim of Mr. Sathe needs to be accepted with a pinch of salt. Placing reliance on the copies of the orders wherein Mr. Sathe appeared before various Courts, in proximity to the date of the dismissal of the instant Suit, Mr. Khandeparkar endeavoured to draw home the point that the Plaintiff is making a malafide attempt to salvage the position by taking refuge under the illness of Mr. Sathe.

22. I am afraid to accede to this submission. The Affidavit of Mr. Sathe, as

indicated above, underscores the difficulties Mr. Sathe faced in diligently pursuing the matter. The fact that Mr. Sathe appeared in some other proceedings in proximity to the date on which the suit came to be dismissed, would not justify jettisoning away the reason assigned by the Applicant/Plaintiff as unjustifiable. Since Mr. Sathe asserts that the suit came to be dismissed on account of default on his part, the matter falls in the realm of inadvertence or remissness on the part of the Advocate.

23. It is well recognised that ordinarily a party should not suffer on account of fault or default in appearance of the Advocate whom it had entrusted its case. When a party does everything in its power to participate in the proceedings, by engaging an Advocate and entrusting the brief, it is considered unjust to punish such a party for default in appearance on the part of its Advocate. Generally, the courts lean in favour of condoning the delay and restoring the proceedings where there is material to show that the default is attributable to the Advocate engaged by a party. Such approach in accord with the well-recognized principle that the procedure is handmaid of justice and it should not be allowed to score a march over substantive justice. It is also in the interest of public justice that a lis is decided on merits, rather than on technicalities or defaults.

24. A useful reference in this context can be made a judgment of the Supreme Court in the case of Secretary, Department of Horticulture, Chandigarh

and Anr. V/s. Raghu Raj³ wherein the principle that a party should not be made to suffer due to default on the part of his Advocate, was expounded with reference to the previous pronouncements. Paragraphs 23 to 28 are material and, hence, extracted below :

“23. Now, it cannot be gainsaid that an advocate has no right to remain absent from the Court when the case of his client comes up for hearing. He is duty bound to attend the case in Court or to make an alternative arrangement. Non-appearance in Court without ‘sufficient cause’ cannot be excused. Such absence is not only unfair to the client of the advocate but also unfair and discourteous to the Court and can never be countenanced.

24. At the same time, however, when a party engages an advocate who is expected to appear at the time of hearing but fails to so appear, normally, a party should not suffer on account of default or non-appearance of the advocate.

25. In *rafiq v.s Munshilal*⁴ the High Court disposed of the appeal preferred by the appellant in absence of his counsel. When the appellant came to know of the fact that his appeal had been disposed of in absence of the advocate, he filed an application for recall of the order dismissing the appeal and to permit him to participate in the hearing of the appeal. The application was, however, rejected by the High Court, inter alia, on the ground that there was no satisfactory explanation why the advocate remained absent. The aggrieved appellant approached this Court. Allowing the appeal setting aside the order passed by the High Court and remanding the matter for fresh disposal in accordance with law, this Court stated (*Rafiq Case*, CC pp 789-90 para 3) :

“3.The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of

3 (2008) 13 SCC 395

4 (1981) 2 SCC 788

the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe he is better informed on this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law."

(emphasis supplied)

26. In Lachi Tewari V/s. Director of Land Records⁵ rule nisi was

5 1984 Supp SCC 431

issued by the High Court in the petition filed in 1976. After seven years, the matter was placed for hearing of rule nisi in 1983. It was the first day of reopening of Courts after holidays. The petitioner had engaged three advocates. None of them, however, was available when the matter was called out. The High Court dismissed the petition and discharged rule since none appeared to press the petition for the petitioner. An application was moved on behalf of the petitioner for recalling of the order and restoration of the petition which was rejected. The petitioner came to this Court. Setting aside the order and remanding the matter to the High Court for fresh disposal and reiterating the law laid down in Rafiq, this Court said :

"4."The mere narration of facts would suffice to focus attention on what point is involved in this appeal. The petitioner obtained rule nisi in 1976 and waited for seven years for its being heard. Suddenly one day the High Court consistent with its calendar fixed the matter for hearing on April 21, 1983. The petitioner had taken extra caution to engage three learned Counsels. We fail to see what more can be expected of him. Further we fail to understand what more steps should have taken in the matter to avoid being thrown out unheard".

27. In Mangilal V/s. State of M.P.⁶ an appeal against conviction recorded by the trial Court was dismissed by the High Court for non-appearance of counsel for the appellant due to 'strike' by lawyers. This Court held that dismissal of appeal by the High Court was improper. The appeal was directed to be restored to file and be heard on merits. [see also Tahil Ram Issardas Sadarangani v. Ramchand Issardas Sadarangani⁷]

28. From the case law referred to above, it is clear that this Court has always insisted advocates to appear and argue the case as and when it is called out for hearing. Failure to do so would be unfair to the client and discourteous to the Court and must be severely discountenanced. At the same time, the Court has also emphasized doing justice to the cause wherein it is appropriate that both the parties are present before the Court and they are heard. It has been noted by the Court that once a party engages a counsel, he

6 (1994) 4 SCC 564

7 1993 Supp. SCC 256

thinks that his advocate will appear when the case will be taken up for hearing and the Court calls upon the counsel to make submissions. It is keeping in view these principles that the Court does not proceed to hear the matter in absence of the counsel.” (emphasis supplied)

25. Undoubtedly, delay of 1503 days is, in a sense, inordinate. However, applying the aforesaid principles to the facts of the case, in my view, the Applicant/Plaintiff has made out a sufficient cause for condonation of delay. Inconvenience and prejudice likely to be caused to the Defendants by restoring the Suit, at this length of time, can be compensated by awarding costs.

26. Hence, the following order :

ORDER

- (i) The Interim Application stands allowed.
- (ii) The delay in taking out the Application stands condoned.
- (iii) The order dated 1 October 2015 dismissing the Suit for want of prosecution stands set aside and Suit No.3350 of 2009 stands restored to file, subject to payment of costs of Rs.10,000/- to each of the Defendants (total costs of Rs.40,000/-) within a period of three weeks.
- (iv) In the event of default on the part of the Plaintiff to pay costs within the aforesaid period, this order shall stand recalled and the order dated 1

October 2015 dismissing the Suit would stand revived without further reference to the Court.

(v) The Interim Application stands disposed.

(N.J.JAMADAR, J.)