

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

**NOTICE OF MOTION NO. 910 OF 2019
IN
SUIT NO. 2592 OF 2012**

Vineet Handa and anr.

....Applicants

IN THE MATTER BETWEEN :

Vineet Handa and anr.

...Plaintiffs

V/s.

Ozo Media Estate Limited and Ors.

....Respondents

Mr. Tejas S. Mahamuni, *for the Applicants/Plaintiffs.*

CORAM : SANDEEP V. MARNE, J.

Dated : 5 February 2024.

P.C. :

1. The Plaintiffs have filed the Notice of Motion for restoration of the suit which has been dismissed for non-prosecution vide Order dated 16 November 2016.
2. The Defendants are served with notices in the Motion. Defendant Nos.1, 3, 4 and 5 were represented on the last date of hearing and sought time to file affidavit-in-reply opposing the Notice of Motion.

However, it appears that the said Defendants have not filed reply opposing the Notice of Motion. Today, none appears on behalf of Defendant Nos.1, 3, 4 and 5. Defendant No.2 is served with notice in the Motion as is apparent from the Affidavit of service filed on behalf of the Plaintiff on 24 April 2023. Defendant No.6 is Municipal Corporation of Greater Mumbai who is not a contesting Respondent.

3. I have perused the reasons stated in the Affidavit in support of the Notice of Motion for restoration of the suit. Considering the explanation given for delay in filing the application for restoration of the suit, in paras-5 to 9 of the Affidavit, I am inclined to condone the delay in filing the present Motion.

4. Learned counsel for the Plaintiff would submit that similar suits have already been compromised by the contesting Defendants with other purchasers. He would submit that in the event of the suit being restored, similar orders by consent can be procured in the present suit as well. Considering the reasons pleaded for condonation of delay and for restoration of the suit, I am of the view that the order passed by this Court on 16 November 2016 dismissing the suit for default deserves to be recalled and the Suit be restored to file.

5. Notice of Motion is accordingly made **absolute** in terms of prayer clauses (a) and (b) which reads thus :

(a) *To recall/set aside the Order dated 16.11.2016 and Restore the Suit to its Original Number which was dismissed in default and for non prosecution by this Hon'ble Court vide Order dated 16.11.2016.*

(b) *To condone the delay in filing the present Notice of Motion seeking Restoration of the Suit to its original number which was dismissed in default and for non prosecution by this Hon'ble Court vide Order dated 16.11.2016.*

SANDEEP V. MARNE, J.

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