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

NOTICE OF MOTION NO.1309 OF 2006
IN
SUMMONS FOR JUDGMENT NO.947 OF 2003
IN
SUMMARY SUIT NO.2797 OF 2003

Chaudhary Abdul Majid Shahadat).. Plaintiff

Versus

M/s.New Bharat Traders and others).. Defendants

Mr.Jayesh N. Bhatt for the Plaintiff.

Mr.A.N. Mulla for the Defendants.

CORAM : SMT. NISHITA MHATRE, J.

DATED : 28TH APRIL 2006

P.C.:

. By the Order dated 20th February 2006 this Court had decreed the Suit. By the Order dated 2nd August 2005, the Defendant was granted conditional leave on deposit of the amount of Rs.3,54,912/-. The present has been taken out for setting aside the decree passed on 20th February 2006 since there was non-deposit of the amount as directed in the Summons for Judgement.

2. It is contended on behalf of the Defendants that the Advocate appearing for the Defendants had not informed the Defendants of the date of the hearing of the Suit. It is also contended that the Defendants could not afford payment of fees of the Advocate. On these grounds, the decree is sought to be set aside.

3. Heard Advocates. In my view, the following order would meet the ends of justice :-

- (a) The decree dated 20th February 2006 is set aside on condition that the Defendants deposits in this Court Rs.50,000/- (Rupees Fifty Thousand only) every fifteen days towards the principal amount of Rs.3,54,912/-.
- (b) The first instalment of Rs.50,000/- would be deposited by the Defendants on 2nd May 2006.
- (c) Failure to deposit any two instalments would mean that the decree dated 20th February 2006 is revived and the Plaintiff would be entitled to execute the decree.
- (d) In the event of the aforesaid amount being deposited within the stipulated time, the Order dated 2nd August 2005 passed in Summons for Judgment will revive.

3. Notice of Motion disposed of accordingly.