**APPLICATION FOR REFERENCE TO HIGH COURT**

IN THE COURT OF THE....................

Suit No..................... of 19........................................

C. D................................................................... Plaintiff

*versus*

C. F................................................................ Defendant

Sir,

The application on behalf of the Defendants most respectfully submits as under:

1. That the suit was dismissed in default on.................... in default of both the parties.

2. That application for restoration of the suit was moved by the Plaintiff’s pairokar who is not duly authorised by a valid power of attorney in writing, U/O 9 Rule 4 C. P. C. on.................... apparently beyond time, without any application for condonation of delay under section 5 of the Limitation Act. The application as such is without authority, illegal and time barred and it was incumbent under law on the learned Court to dismiss the application as such.

3. That.................... was fixed for disposal of the aforesaid application for restoration and a reply to the said application was filed in the court on this date but before the time the reply was filed in Court after service of the same to the counsel of the Plaintiff, the learned Court disposed of the application without hearing the defendant, and the Plaintiff also did not appear to press the application. The order on the application was in absence of both the parties.

4. That the defendant’s Counsel.................... Requested the court for hearing him on the application and reply thereto, to which the learned Court remarked that the defendant has no right to contest the application U/O 9 Rule 4 C. P. C. and ordered the reply to be kept on record.

5. That from the circumstances aforesaid the following questions arise:

(1) Whether the learned Court can allow an application U/O. 9 Rule 4 C. P. C., which is apparently time barred taking it to be within time, in the absence of the plaintiff, without there being any application for condonation of delay.

(2) Whether the defendant has under law no right to contest the application under order 9 Rule 4 C. P. C. ?

(3) Whether a suit can be restored at the application and affidavit of a *pairokar* not duly authorised by a valid power of attorney in writing?

6. That the above mentioned substantial questions of law, the view on which of the.................... is not expressed so far as such a peculiar case might not have come before the Hon’ble High Court as the present one, and the defendants are prejudiced by not giving them the "equal protection of the laws" as guaranteed under Article 14 of the Constitution, it is expedient that the questions may be referred to the Hon’ble High Court for decision thereon and directions to this learned Court accordingly.

**PRAYER**

It is, therefore, most respectfully prayed that the question raised in para 5 of this application may be referred to the Hon’ble High Court, for decision thereon.

Counsel for Defendants.

Place:....................

Dated:....................