

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 88 OF 2015
WITH
CIVIL APPLICATION NO. 108 OF 2015
IN
NOTICE OF MOTION NO. 2473 OF 2014
IN
L.C. SUIT NO. 2785 OF 2009

Amritlal Chabbilal Nirmal .. Appellant
vs
Municipal Corporation of Greater Mumbai & Anr. .. Respondents

Ms. Geeta Shastri i/b Mr. M.L. Verma for the appellant.
Mr. A.V. Diwate for respondent no.1.
Ms. Jaya Bagwe for respondent no.2.

CORAM: R.D. DHANUKA, J.

DATE : 14TH DECEMBER 2015

P.C.:

1. By this Appeal from Order, the appellant has impugned the order dated 9th December 2014 passed by the learned Trial Judge dismissing the Notice of Motion filed by the appellant (original plaintiff) by which the appellant had applied for restoration of the suit dismissed by the learned Trial Judge by an order dated 19th June 2014 for default.

2. Perusal of the record prima facie indicates that the matter was kept back by the learned Trial Judge on 19th June 2014 to enable the plaintiff to file photocopies of the original documents before the Trial Court.

3. Ms. Shastri, learned counsel for the appellant, submits that the appellant has already affirmed the affidavit of evidence of the appellant on 15th June 2014 itself before an officer of the City Civil Court. Learned counsel tenders the original of the said affidavit of evidence for perusal of the Court. She submits that since the affidavit in lieu of examination in chief was to be filed along with copies of the documents, the appellant (original plaintiff) was taking out the photocopies of the said documents so as to comply with the order passed by the learned Trial Judge. She submits that when the plaintiff came at 4.45 p.m. with the original documents and the photo copies, the plaintiff found that the Court was adjourned for the day. The plaintiff subsequently came to know that the learned Trial Judge had already dismissed S.C. Suit No. 2785 of 2009.

4. Learned counsel also invited my attention to the roznama of the proceedings to demonstrate that on 19th June 2014, the plaintiff was present when the matter was initially called out. When the matter was called out at 3.00 p.m., learned advocate for the plaintiff was present. The matter was thereafter called out at 3.50

p.m. and 4.15 p.m. when the plaintiff and the learned advocate are shown as absent. She submits that the plaintiff was deprived of an opportunity to produce the documents before the Trial Court.

5. Learned counsel appearing for respondent no.2, on the other hand, opposes this appeal on the ground that the plaintiff did not have any original documents when the matter was on board on 19th June 2014 and the plaintiff filed such original documents before the Small Causes Court.

6. Perusal of affidavit in support of the notice of motion filed by the plaintiff indicates that the plaintiff had come back to the Court at 4.45 p.m. with all the original and photocopies. In my view, the learned Trial Judge ought not to have dismissed the notice of motion for restoration of the suit for the reasons recorded in the impugned order or otherwise. The suit was of the year 2009. Even if there was slight delay on the part of the appellant in producing the documents when the matter was kept back, the learned Trial Judge, in my view, ought to have accepted the reasons recorded in the affidavit in support of the notice of motion and ought to have restored the suit and should have given an opportunity to the appellant to pursue the suit on merits. No prejudice would have been caused to the respondents if the notice of motion for restoration of the suit would have been allowed.

7. In view of the above, I pass the following order:
- (i) Appeal from Order No. 88 of 2015 is allowed. The impugned order dated 9th December 2014 passed by the learned Trial Judge dismissing the notice of motion is set aside. Notice of Motion No. 2473 of 2014 is made absolute in terms of prayer clause (a). L.C. Suit No. 2785 of 2009 is restored to file on the condition that the appellant (original plaintiff) shall pursue the said suit and would not seek any unnecessary adjournment.
 - (ii) In view of disposal of the Appeal from Order, Civil Application No. 108 of 2015 does not survive and is accordingly disposed of.
 - (iii) No order as to costs.

(R.D. DHANUKA, J.)