

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1753 OF 2012

Matushree Steel Industries (P) Ltd. .. Petitioner

vs.

Mr. B. Shama Kotian and anr. .. Respondents

Mr. Navin Parekh a/w. Ms Sheetal Shah i/b M/s. Mehta & Girdharlal
for the Petitioner.

Mr. P.J. Thorat for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 1 April, 2015.

P.C. :-

1] This petition questions the order dated 21 December 2011, by which the learned City Civil Judge has restored the Notice of Motion dismissed on 30 June 2008 to its original number for disposal in accordance with law.

2] The Notice of Motion, which is now restored had alleged contempt by the petitioner and the same was dismissed for default on 30 June 2008. On the same date, in the afternoon session, an application was made for restoration. On 21 July 2008, as no steps were taken for service, the application dated 30 June 2008 was dismissed.

3] Thereafter, the suit, in which the Notice of Motion was taken out was dismissed for default on 30 June 2008. Further the application was taken out (Marked as Exhibit-2) seeking restoration not only of the suit, but also of the application dated 30 June 2008, which had since been dismissed on 21 July 2008.

4] By order dated 2 March 2009, the application at Exhibit-2 was allowed. Consequently, not only was the suit restored, but further the application dated 30 June 2008 which had been dismissed on 21 July 2008, was also restored.

5] By the impugned order dated 21 December 2011, the learned City Civil Judge has now allowed the application dated 30 June 2008 and further restored the Notice of Motion for consideration in accordance with law. In these circumstances, the contention of the learned counsel for the petitioner that on 21 December 2011, when the impugned order was made, the application dated 30 June 2008 for restoration of the Notice of Motion was not surviving, cannot be accepted.

6] This Court, in case of *Rajaram Waman Masurkar Vs. Lokmanya Shikshan Prasarak Mandal, Vadavali - 2008(1) Bom. C.R. 422*, has already held that Notice of Motion urging contempt, if dismissed for default, can be restored if sufficient cause is made out.

7] The impugned order records that sufficient cause was made out in the present case. The application for restoration was made on the same day on which the Notice of Motion came to be dismissed for default.

8] In the aforesaid circumstances, there is no jurisdictional error in the making of impugned order. Accordingly, this petition is dismissed. There shall, however, be no order as to costs.

(M. S. SONAK, J.)

dinesh