

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CIVIL APPELLATE JURISDICTION.**

**APPEAL FROM ORDER NO. 345 OF 2015
WITH
CIVIL APPLICATION NO. 441 OF 2015**

Mr. Masood A. Siddique	... Appellant.
V/s.	
The Municipal Corporation of Greater Mumbai & Ors.	... Respondents

Mr. A.R. Shaikh with S.R. Waghmare for the appellant.
Mr. S. K. Sonawane for the respondent nos. 1 and 2/ BMC.
Respondent no.3 party in person Mr. Aderabad Irani.

**CORAM : K. K. TATED, J.
DATED : 16/07/2015.**

P.C.:

. Heard learned Counsel Mr. Shaikh for the appellant, Mr. Sonawane for respondent no.1&2 Corporation, Mr. Aderabad Irani respondent no.3 party in person.

2 By this Appeal from Order, the appellant/plaintiff challenging the order dated 27.02.2015 passed by Bombay City Civil Court at Bombay below Exhibit- A in L. C. Suit No. 2178 of 2012 by which the plaintiff's application for restoration of suit was rejected.

3 The learned counsel for the plaintiff submits that before Trial Court, the earlier the plaintiff appointed Dharam & Co. Advocates to conduct the suit on his behalf. He submits that the earlier Advocate failed and neglected to attend the Court on time. Not only that, the earlier Advocate has not prepared the Affidavit-of-Evidence within

time. He submits that in the meanwhile the matter appeared on board before the Trial Court for 5 to 6 times for filing their Affidavit-of-Evidence. He submits that on 09.02.2015, the plaintiff appeared party in person and filed application at Exh.18 for engaging some other Advocate. At that time, the Trial Court by order dated 09.02.2015 adjourned the matter for dismissal to 21.02.2015. He submits that on 21.02.2015, the Court was vacant and therefore, the matter was adjourned to 27.02.2015. He submits that in the meanwhile, the newly appointed Advocate gone through the papers and proceeding of the matter. At that time, he noticed that they have to carry out appropriate amendment in plaint. Hence, he preferred Chamber Summons dated 27.02.2015 for carrying out appropriate amendment in plaint. Those amendments are as under:

“1 Cause title of the plaint address of the suit premises ought to corrected from:-

*“Shop/Sall No.3, 15, Pilla Lodge Building,
Shanker Sheth Road, (Bhaji Galli)
Mumbai – 400 007.*

To

*Shop/Stall No.3, Pilla Lodge Building compound,
Ground floor, 15, Shanker Sheth Road,
(Bhaji Galli), Grant Road (W),
Mumbai – 400 007.*

2. Correction ought to be done in the paragraph no.2 of the plaint about the description of the suit shop premises instead of

*Shop No.3 admeasuring 1.50mtX1.10mt.X2.15mt.
situated at Ground Floor of the building known as Pilla Lodge,
Shankar Sheth Road, (Bhaji Galli), Mumbai – 400 007.*

To

*Shop No.3 admeasuring 1.50mtX1.10mt.X2.15mt.
Ground Floor, situated in the compound of Pilla Lodge building,
15, Shankar Sheth Road, (Bhaji Galli), Grant Road (W),
Mumbai – 400 007.”*

4 The learned counsel for the plaintiff submits that on 27.02.2015, the Advocate for plaintiff tendered the Chamber Summons across the bar for carrying out appropriate amendments. That was vehemently opposed by the respondents/defendants. He submits that the Trial Court rejected the Chamber Summons on 27.02.2015 and also dismissed the suit on the ground that plaintiff wants to prolong the litigation. He submits that thereafter, the plaintiff immediately filed application on same day i.e. 27.02.2015 for restoration of the suit. He submits that, that application was vehemently opposed by the respondent party in person. He submits that after hearing both the sides, the Trial Court passed order dated 27.02.2015 below Exhibit- A and rejected plaintiff's application for restoration of suit.

5 The learned counsel for the plaintiff submits that because of mistake on the part of his Advocate, who failed to prepared the Affidavit-of-Evidence within time and to remain present in the Court when the matter appeared, the plaintiff should not be suffered. He submits that plaintiff is ready and willing to file his Affidavit-of-Evidence within two weeks from today. He further submits that the plaintiff does not want to carry out any amendments in the plaintiff. The plaintiff is ready and willing to go on with the matter as it is. He submits that in the interest of justice, this Hon'ble Court be pleased to set aside the order dated 27.02.2015 passed by the Trial Court below Exhibit- A and restore the L.C. Suit No. 2178 of 2012 for hearing and final disposal on its own merits. He submits that if the present Appeal from Order is not allowed, irreparable loss and injury will be caused to the plaintiff.

6 On the other hand, the respondent no.3 party-in-person vehemently opposed the present Appeal from Order. He submits that the plaintiff wants to prolong the litigation on one or other ground. He submits that on several occasions neither plaintiff nor his Advocate remained present before the Trial Court. He submits that Trial Court framed issue on 05.07.2014 and thereafter, the matter was adjourned for Affidavit-of-Evidence of the plaintiff. He submits that on 09.07.2014, the son of plaintiff applied for adjournment on the ground that his father was not keeping well. Thereafter, on 13.10.2014 the son of plaintiff filed application for adjournment on the ground that they want to change the Advocate. He submits that thereafter, matter was appeared before the Trial Court on 10.11.2014, 12.01.2015 and lastly on 09.02.2015. On all these dates, the plaintiff applied for adjournment on one or other ground without filing his Affidavit-of-Evidence. Hence, the Trial Court lastly adjourned the matter on 27.02.2015 for dismissal. He submits that on 27.02.2015 plaintiff filed chamber summons for amendment of plaint. He submits that the Trial Court rightly rejected the plaintiff's application for carrying out amendments in the plaint and dismissed the suit on the ground that plaintiff wants to prolong the litigation.

7 The respondent no.3 party in person further submits that in the present proceeding, he filed Application below Exhibit- 13 dated 17.12.2012 for rejection of the plaint under Order VII Rule 3 and 11(a) of Code of Civil Procedure, 1908 for non setting out proper description of the suit premises and area in the plaint. He submits that, that application was duly served on the plaintiff. He submits that in spite of

the knowledge about the non setting out the proper description of the suit property, the plaintiff failed and neglected to take appropriate steps for more than three years. He submits that when the Trial Court kept the matter for dismissal, on that date, the plaintiff filed Chamber Summons for amendment. Hence, the Trial Court rightly rejected the same.

8 On the basis of these submissions, the respondent no.3 party in person submits that there is no substance in the present Appeal from Order and same to be dismissed with costs.

9 I heard both the sides at length. Upon perusal of the order dated 27.02.2015 passed by the Trial Court below Exhibit- A in L.C. suit No. 2178 of 2012, I do not find any error committed by the Trial Court in passing the said order. It is the fact that matter was appeared on board on several occasions for filing Affidavit-of-Evidence on the part of the plaintiff. The plaintiff has made application on the several grounds for adjournments. The plaintiff filed application stating that his earlier Advocate is not co-operating with him, he is not making his Affidavit-of-Evidence and hence, he wanted to appoint some other Advocate. Thereafter, the plaintiff appointed the present Advocate to conduct his matter in the Trial Court. Lastly, when the matter was kept for dismissal, the plaintiff filed Chamber Summons for amendment of plaint. Instead of filing Affidavit-of-Evidence, the plaintiff filed application for adjournment.

10 Considering the subsequent development in the matter that plaintiff has to make application to change his Advocate, the plaintiff

was not keeping well for sometime, his wife also was not keeping well, in the interest of justice, I feel that one chance should be given to the plaintiff to proceed with his suit in the Trial Court.

11 Hence, on the above mentioned facts and in the interest of justice, the following order is passed:

ORDER

a) The order dated 27.02.2015 passed by the Bombay City Civil Court, Mumbai below Exhibit- A in L.C. Suit No. 2178 of 2012 is set aside.

b) The plaintiff's application dated 27.02.2015 (Exhibit- A) for restoration of suit is allowed.

c) L.C. Suit No. 2178 of 2012 is restored on file of Bombay City Civil Court at Bombay for final hearing on its own merits.

d) Appellant/plaintiff to file his Affidavit-of-Evidence within two weeks from today and serve copy on other side, failing which the Appeal from Order shall stand dismissed without further reference to the court.

e) Hearing of L.C. Suit No. 2178 of 2012 is expedited.

f) This Court expects from the Trial Court to decide the L.C. Suit no. 2178 of 2012 as early as possible, but in any case, on or before 31.03.2016.

g) Appellant to pay cost of Rs.15000/- to the respondent no.3 within four weeks from today, failing which L.C. Suit No. 2178 of 2012 shall stand dismissed without further reference to the court.

h) Office of the Trial Court is directed to place the matter before the Concerned Judge on 30.07.2015.

i) In view of disposal of Appeal from Order, nothing survives in the Civil Application. Hence, same is dismissed as infructuous.

j) Parties to act on authenticated copy of this order.

(K.K.TATED, J.)