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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.454 OF 2014
IN
NOTICE OF MOTION NO.3362 OF 2013
IN
S.C. SUIT NO.4554 OF 2011

Mittul M. Desai ...Appellant

V/s.

Loop Mobile (India) Ltd. ...Respondent

Mr.Pravinchandra Desai for the Appellant.

None for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 23RD NOVEMBER, 2015.

P.C. :-

1. None appeared for the respondent, though served.
2. By this appeal from order, the appellant has impugned the order dated 13th March, 2014 passed by the learned trial Judge, dismissing Notice of Motion No.3362 of 2013, by which the appellant had applied for restoration of the suit dismissed for default. The defendant was also absent when the suit was called out for hearing. Though the learned trial Judge has recorded that the plaintiff was late by five to ten minutes and had appeared before the trial Court after

five to ten minutes of dismissal of the suit, the learned trial Judge did not restore the suit and asked the appellant to file the application for restoration of the suit. Though sufficient reasons were recorded in the affidavit in support of the notice of motion for remaining absent when the matter was called out, the learned trial Judge has not accepted such reasons and dismissed the notice of motion on the ground that the reasons recorded in the affidavit in support of the notice of motion were not corroborated with the statements made across the bar. Learned advocate representing the plaintiff was not in India when the matter was called out. In my view, the learned trial Judge ought to have restored the suit and ought to have allowed the notice of motion. The reasons recorded in the affidavit in support of the notice of motion were sufficient to restore the suit. In my view, the learned trial Judge has passed order mechanically and thus deserves to be set aside.

3. The impugned order dated 13th March, 2014 dismissing the notice of motion is set aside. Notice of Motion No.3362 of 2013 is allowed in terms of prayer clauses (a) and (b) of S.C. Suit No.4554 of 2011 is restored to file.

4. The learned trial Judge is directed to place the matter on board for directions on 7th December, 2015 for the purpose of issuing further directions in the suit.

5. The appeal from order is allowed in aforesaid terms. No order as to costs.

(R.D. DHANUKA, J.)