

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO. 748 OF 2015****IN****NOTICE OF MOTION NO. 2458 OF 2014****IN****NOTICE OF MOTION NO. 400 OF 2013****IN****L.C. SUIT NO. 3023 OF 2006****Rizvi Land Developments Pvt. Ltd.****..... Appellants****VERSUS****The Municipal Corporation of Greater
Mumbai****..... Respondents**

Mr.R.S.Apte, Senior Advocate, a/w. Mr.Mahesh Mishra, i/b. Mr.Ravi Thankaian
None for the Appellants.

Ms.M.R.Bhoir for the Respondents – BMC.

CORAM : R.D. DHANUKA, J.**DATED : 24th NOVEMBER, 2015****P.C.**

By this appeal from order, the appellant has impugned the order dated 24th March, 2015 passed by the learned trial judge dismissing the Notice of Motion No.2458 of 2014 in which the appellants had applied for restoration of the suit and for setting aside the order dated 20th March 2015 passed in the Notice of Motion No. 400 of 2013.

2. A perusal of the record indicates that though the appellant (original plaintiff) had stated sufficient reasons for remaining absent when the suit was called out for hearing and final disposal, the learned trial judge has dismissed the notice of motion merely on the ground that the earlier notice of motion filed by the appellants for setting aside the order dated 20th March, 2012 was dismissed. The

order dated 21st April, 2014 passed by the learned trial judge in the Notice of Motion No.400 of 2013 in my view was not passed on the erroneous grounds. The appellants had thus rightly filed a fresh notice of motion for setting aside the order passed in the notice of motion as well as the suit dismissing for default. For the reasons recorded in the affidavit in support of the Notice of Motion No.2458 of 2014, the order dated 24th March, 2015 passed by the learned trial judge is set aside. Appeal is allowed in the aforesaid terms. The suit is restored to file.

3. Mr.Apte, learned senior counsel appearing for the appellants on behalf of his client undertakes that the appellants would pursue the suit and will not seek any unnecessary adjournment. Undertaking is accepted.

4. Since issues are already framed, the parties are directed to file their affidavit of evidence before the trial court. The trial court is directed to place the matter on board for directions on 14th December, 2015 when further direction can be issued by the trial court for proceeding the suit expeditiously. Appeal from order is disposed of in the aforesaid terms. No order as to costs. Interim order which was in force in the trial court proceedings which have come to an end in view of the dismissal of the suit are restored.

[R.D. DHANUKA, J.]