

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**WRIT PETITION NO.9806 OF 2013**

Jehangir Adi Wadia and Ors. ] ... Petitioners

Versus

Mr. Harishchandra Sakharam Patil and Ors. ] ... Respondents

Mr. Yayha Ghoghari a/w Ms. Manisha Virkhav i/b Vigil Juris for  
Petitioners.

Mr. Mukul Taly a/w Mr. Daniel I. A. i/b S. Mahomedbhai & Co. for  
Respondent No.2.

**CORAM :- M. S. SONAK, J.**

**DATE :- APRIL 06, 2015**

**P. C. :-**

1. Rule. With the consent of and at the request of the learned Counsel for parties, Rule is made returnable forthwith.

2. This petition challenges Order dated 08/08/2013 made by the City Civil Court at Bombay dismissing the suit for default, by rejecting the Petitioners' application for adjournment to adduce evidence.

3. The impugned order records that Affidavit-in-evidence was proposed to be tendered by and on behalf of the Petitioners-Plaintiffs but adjournment was applied for on the ground that the witness was not available to depose in the matter due to his personal difficulty.

4. Although, the application does not indicate the nature of personal difficulty, the learned Counsel for Petitioners points out that the witness was unwell on the said date and therefore adjournment was applied for to examine him on the next date.

5. Although, the Petitioners have been negligent in the matter, nevertheless, the impugned order, in the circumstances, is quite harsh. Considering that the Petitioners were seeking only a short adjournment in the matter, the same could have been granted subject to payment of costs.

6. The learned Counsel for Respondent No.2 submitted that under Order 17 Rule 3 of the CPC where any party to a suit to whom time has been granted fails to produce his evidence or, cause the attendance of his witnesses, the Court may, notwithstanding such default, if the parties are present, proceed to decide the suit forthwith. In such circumstances, the learned Counsel for Respondents submitted that the impugned order is virtually a decision in the suit and as against the same, the appropriate remedy would be to prefer a regular appeal and not the present Writ Petition.

7. In the event, the learned Civil Judge, notwithstanding the default on the part of the Petitioners had proceeded to decide the suit forthwith on the basis that the Counsel for the Petitioners was present, then, perhaps, there may have been some scope to consider the objection raised by the learned Counsel for the Respondent No.2.

However, that not being the fact situation, there is no necessity to decide such issue. Suffice it to note that in the peculiar facts and circumstances of the present case, no useful purpose would be served by relegating the Petitioners to avail alternate remedy, if any, that may be available to them.

8. For the default and negligence on the part of the Petitioners, they ought to be visited with costs. The trial in the suit has been delayed for reasons attributable to the Petitioners. Although the impugned order is too harsh and is required to be set aside, the same shall be, subject to payment of costs of Rs.20,000/- by the Petitioners to the Respondent No.2, who has put an appearance in the present petition through Counsel.

9. Accordingly, the impugned order dated 08/08/2013 is set aside, subject to the Petitioners paying costs of Rs.20,000/- (Rupees Twenty Thousand Only) in favour of the Respondent No.2 herein. Such costs may be directly paid to the Respondent No.2 or deposited before the City Civil Court within a period of four weeks from today.

10. The Short Cause Suit No.3347 of 2005 is restored, consequent upon setting aside of the impugned order. The parties to appear before the City Civil Court on 10/06/2015 at 11.00 a.m. in order to obtain further directions in the matter.

11. Considering that the suit is of the year 2005, the City Civil Court is directed to dispose of the same as expeditiously as possible and in any case, within a period of one year from today.
12. All parties, including in particular the Petitioners, to co-operate in the matter of expeditious disposal of the suit.
13. Rule is made absolute to the aforesaid extent.
14. There shall be no order as to costs.

**(M. S. SONAK, J.)**