

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION

APPEAL FROM ORDER NO.74 OF 2015

A. P. Unwalla & Ors.

... Appellants

V/s.

The Board of Trustees of the Mumbai Port Trust

... Respondent

Mr. V. B. Naik, Senior Advocate with Darshan Mehta with Sadhavi Shahi
i/b. M/s. Dhruve Liladhar & Co. for the Appellant.

Mr. Vishal Talsania with Sneha Pandey i/b. Motiwala & Co. for the
Respondent.

CORAM: K.K. TATED, J.

DATED : FEBRUARY 17, 2015

PC. :

1. Heard the learned counsel for the parties. This appeal is preferred by the Plaintiffs challenging the order dated 17/01/2014 passed by the Bombay City Civil Court, Mumbai in Notice of Motion No.4242/2013 refusing the Plaintiffs' prayer for restoration of the S.C.Suit No.7464/2001 (High Court Suit No.2599/2001) which was dismissed for default on 03/08/2013.

2. The learned senior counsel for the Plaintiffs submits that initially they filed High Court Suit No.2599/2001 in this court on Original Side for renewal of lease dated 30/10/1897 which expired on 31/10/1996. He submits that in view of change of jurisdiction, the matter was transferred to the Bombay City Civil Court, Mumbai, wherein the

Respondent No.1 preferred Notice of Motion for condonation of delay in filing the written statement. The Trial Court, after condoning the delay in filing the written statement, allowed the Respondent Defendant to file written statement on 02/03/2013. Thereafter, the matter appeared on board from time to time. He submits that as none appeared on behalf of the Plaintiffs on 17/06/2013, 24/06/2013, 15/06/2013 and 03/08/2013, the Trial Court dismissed the suit for want of prosecution. He submits that as soon as they learnt about dismissal of the suit for want of prosecution, they preferred Notice of Motion No.4242/2013 for setting aside the order dated 03/08/2013 and for condonation of 80 days delay in filing the Notice of Motion. He submits that in support of the Notice of Motion, they filed affidavit dated 22/11/2013 in which it is specifically stated that due to genuine difficulty, their Advocate could not remain present when the matter was called out. He submits that during pendency of the suit, the Plaintiffs received letter dated 19/12/2013 from their Solicitor stating that they will keep informed about development in the matter. Relying on the said letter, the Plaintiffs have not made any enquiry thereafter. When they received letter dated 12/08/2014 from the Defendant, they learnt about dismissal of the suit. The learned Senior Counsel for the Plaintiffs submits that they have good chance of success in the present proceedings. He submits that the lease which was granted on 30/10/1897 expired on 31/10/1996 and for renewal of the same they filed present proceedings. He submits that if the suit is not restored, irreparable loss and injury will be caused to them. He submits that as on today, they are running Royal Bombay Yacht Club on the said land. The learned senior counsel for the Plaintiffs submits that in the interest

of justice, this Hon'ble Court be pleased to set aside the impugned order dated 17/01/2014 passed by the Bombay City Civil Court, Mumbai allowing Notice of Motion No.4242/2013 and set aside the dismissal order dated 03/08/2013 and restore the suit to file for final hearing on merits.

3. On the other hand, the learned counsel for the Respondent - Defendant vehemently opposed the Appeal from Order. He submits that the Plaintiffs have not shown sufficient cause for restoration of the suit which was dismissed by order dated 03/08/2013. He submits that the Trial Court passed the impugned order dated 03/08/2013 dismissing the Plaintiffs' suit for want of prosecution because no one appeared on behalf of the Plaintiffs on 17/06/2013, 24/06/2013 and 15/07/2013. On the basis of this submission, the learned counsel for the Defendant submits that there is no substance in the Appeal from Order and same be dismissed with costs.

4. Heard both sides at length. It is to be noted that in the present proceedings, due to mistake of the advocate for the Plaintiffs, the matter stood dismissed for want of prosecution. The Plaintiffs relied on their Solicitor's letter dated 19/12/2013 in which it is stated that the Solicitor will inform further development in the matter. Considering these facts and the reasons disclosed by the Plaintiffs in their affidavit in support of the Notice of Motion No.4242/2013, I am satisfied that the Plaintiffs have made out a case for allowing this Appeal from Order. Hence, following order:

- a) The impugned order dated 17/01/2014 passed by the Trial Court in Notice of Motion No.4242/2013 in S.C.Suit No.7464/2001 is set aside.
- b) The order dated 03/08/2013 passed by the Bombay City Civil Court, Mumbai by which the suit filed by the Plaintiffs was dismissed for want of prosecution is set aside.
- c) The S.C.Suit No.7464/2001 (High Court Suit No.2599/2001) is restored to file for hearing on merits.
- d) The Plaintiffs to pay cost of Rs.1,00,000/- (Rs. One lac only) to the Respondent – Defendant within two weeks from today, failing which the Appeal from Order shall stand dismissed without further reference to the court.
- e) The Plaintiffs to intimate the Registry of this court about payment of cost within time.
- f) Parties to act on a copy of this order duly authenticated by the Sheristedar of this court.

(K.K. TATED, J.)