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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1168 OF 2014

WITH
CIVIL APPLICATION NO.1409 OF 2014
IN
APPEAL FROM ORDER NO.1168 OF 2014

Mandar N. Kerkar	...Appellant
V/s.	
Rakesh R. Verma & Ors.	...Respondents

None for the Appellant.

None for the Respondents.

CORAM : R.D. DHANUKA, J.
DATE : 16TH NOVEMBER, 2015.

P.C. :-

1. None appeared for the appellant. The respondent Nos.1(a) and 1(b) are duly served. None appeared for the respondent nos.1(a) and 1(b) also.

2. By this appeal the appellant (the original plaintiff) has impugned the order dated 18th October, 2014 passed by the learned trial Judge dismissing the unregistered notice of motion, which was filed for restoration of the suit. A perusal of the order passed by the learned trial Judge indicates that the learned advocate representing the appellant was absent. None had appeared for the defendants

before the learned trial Judge. A perusal of the appeal memo indicates that the matter was on board for direction between 17th April, 2014 and 11th September, 2014 and was adjourned for want of time. On 11th September, 2014, the suit was listed under caption “for compliance”. On 18th September, 2014, the advocate for the appellant pointed out that there was nothing required to be complied with by the appellant and the Court ought to have either framed the issue and/or ought to have pass direction for filing the affidavit of evidence. Instead of framing issues, the learned trial Judge has dismissed the suit itself. The explanation rendered by the appellant in the affidavit in support of the notice of motion are not considered and the said notice of motion for restoration of the suit is dismissed casually. A perusal of the affidavit in support of the notice of motion indicates that proper and sufficient reasons were set out in the affidavit in the notice of motion for restoration of the suit.

3. In my view, the learned trial Judge ought not to have dismissed the said notice of motion filed by the appellant for restoration of the suit. The impugned order dated 18th October, 2014 is accordingly set aside. The appeal from order is allowed. The notice of motion filed by the appellant for restoration of suit is allowed. The suit is restored to file of the trial Court.

4. Hearing of the suit is expedited. The learned trial Judge is

directed to place the matter on board for framing issues. Both the parties are directed to exchange the draft issues within two weeks from today. The learned trial Judge shall place the matter on board for framing issues on 15th December, 2015. No order as to costs.

5. In view of disposal of the appeal from order, the civil application does not survive and is accordingly disposed of.

(R.D. DHANUKA, J.)