

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

APPEAL FROM ORDER NO.108 OF 2015

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.U.J.Makhija i/b Mr.S.C.Patel for the appellant

Mr.Mikhail Behl i/b M/s.Madekar and Co. for the respondent nos.2 to 4

CORAM : K.K.TATED, J.
DATED : 04/08/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This Appeal from Order is preferred by plaintiff challenging the order dated 8.11.2014 passed by Bombay City Civil Court, Mumbai in unregistered Notice of Motion in Suit No.8198 of 1986 for setting aside the dismissal order dated 10.10.2014 and to restore the suit on board for hearing and final disposal on its own merits.
- 3 By consent of both the parties, matter is taken on board for final hearing at the stage of admission itself.
- 4 The learned counsel for the appellant plaintiff

submits that cost imposed by the Trial Court by order dated 30.4.2013 was paid by them on 6.5.2013 i.e. within time.

5 The learned counsel for the appellant placed on record copy of roznama in Suit from 14.1.2013 till 10.10.2014. The roznama shows that the City Civil Court has not received all the papers of Suit No.8198 of 1986 (High Court Suit No.955 of 1986). It is recorded in the Roznama from time to time that since evidence and documents were not received from the High Court, Registry to take appropriate steps.

6 The learned counsel for the appellant plaintiff submits that till today those papers were not received by the Trial Court and inspite of that, Trial Court dismissed the suit by order dated 10.10.2014 on the ground that plaintiff has not paid the cost imposed on him and delaying the proceedings. Copy of the roznama placed on record by the advocate for the plaintiff shows that matter was adjourned from time to time for want of copies of evidence and documents from the Registry of High Court. Hence, that cannot be a ground to hold that the plaintiff is prolonging the litigation and to dismiss the matter.

7 On the basis of roznama placed on record by the appellant plaintiff it is crystal clear that the plaintiff is not prolonging the hearing and final

disposal of the suit.

8 Considering these facts, I am of the opinion that plaintiff has made out a case for allowing Appeal from Order. Hence, following order:

a) Order dated 8.11.2014 passed by Bombay City Civil Court, Mumbai in unregistered Notice of Motion date 8.11.2014 in Suit No.8198 of 1986 is set aside.

b) Unregistered Notice of Motion dated 8.11.2014 is made absolute in terms of prayer clause (a) which reads thus:

“(a) That the above suit which is dismissed on 10th October 2014 be restored and place it on Board for hearing and final disposal.”

c) Suit No.8198 of 1986 is restored on the file of Trial Court for hearing and final disposal on its own merits.

d) Bombay City Civil Court, Mumbai is directed to hear Suit No.8198 of 1986 on its own merits after receipt of all the documents from the Registry of High Court.

e) Appeal from Order is made absolute accordingly.

f) No order as to costs.

g) Liberty granted to the appellant plaintiff to make appropriate application in the office of Prothonotary and Senior Master, High Court,

O.O.C.J. Bombay for sending the papers
immediately to the Trial Court.

(K.K.TATED, J.)