

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.1357 OF 2015
WITH
CIVIL APPLICATION NO.1055 OF 2014

Jayanti S. Shetty and Another

... Appellants/
Ori. Defendants

vs.

Lalitamba Chandramouli

... Respondent/
Ori. Plaintiff

Mr. Vishal Kanade i/b. M/s. Chitnis Vaithy & Co. for the
Appellants.

Mr. Ashutosh Tripathi i/b. Legal Point, for the Respondent.

CORAM: **MRS.MRIDULA BHATKAR, J.**

DATE: **8th JANUARY, 2016**

P.C.:

. This First Appeal is directed against the judgment and order dated 23rd July, 2013 passed by the learned Judge of the City Civil Court, Bombay in suit No. 9206 of 1994 filed by the Respondent-original Plaintiff for the specific performance against the Appellants.

2. Without going into the merits, this Appeal is disposed of with the following observation.

3. The suit was tried before the learned Judge of the City Civil Court, Mumbai. He heard the arguments and reserved the judgment. However, he was transferred in May, 2013 without delivering the judgment and the said matter was assigned to the learned Judge who decided the suit. The matter was listed on 26th June, 2013 before him. He directed the parties to re-argue the matter and the matter was fixed on 9th July, 2013. At that time, the arguments of the learned counsel for the Plaintiff were heard, however neither the Defendants nor their advocate were present. So the matter was adjourned to 15th July, 2013. On that day also nobody was present on behalf of the Defendants. Therefore, the matter was decided and disposed of by the judgment and order dated 23rd July, 2013.

4. The perusal of the Roznama discloses that the learned Judge has given time to the Appellants and their advocate to argue the matter. However, from the peculiar circumstances, it reveals that the learned counsel for the Defendants have already argued the matter before the predecessor of the learned Judge and the Defendants were under impression that the same judge was bound to

pass the judgment and so they were waiting. However, in between the learned Judge was transferred. It was the duty of the learned counsel for the Appellants to keep the track.

5. The Roznama produced before me shows that on 18th April, 2013 the arguments were heard by the learned Judge Mr. S.R. Jagtap of C.R. No. 13. The matter was adjourned for further submission on 30th April, 2013 and again to 4th May, 2013. On that day, the Plaintiff was present but the Defendants were absent. Hence, the matter was fixed for citation on 10th May, 2013. On that day also Defendants and their advocate were absent. Therefore the matter was adjourned for judgment on 10th June, 2013. On that day, the matter was taken up before the learned Judge Mr. Pansare of C.R. No. 13 who has taken the charge of Court Room No. 13. On that day, the Plaintiff was present but neither the Defendants nor their advocate were present. So the matter was adjourned for judgment on 18th June, 2013. On 18th June, 2013 the learned Judge Mr. Pansare went for judicial training and returned on 26th June, 2013. Again the matter appeared before the learned Judge Mr. Pansare and he has taken a note that this matter was kept for judgment however, the parties were

heard by his predecessor. So he kept the matter on 9th July, 2013 for re-argument. On 9th July, 2013 as nobody was present for the Defendants, argument of the Plaintiff were heard and the Defendants were given one more chance to appear and argue the matter on 15th July, 2013. However, neither the Defendants nor their advocate remained present on that day also and therefore, the matter was adjourned for judgment on 23rd July, 2013.

6. Thus, it shows that the learned Judge has given sufficient time to the Defendants to appear and it can be said that it is the negligence of the part of the Defendants and their counsel and therefore the matter was decided without hearing them. However, as the matter was argued earlier by the learned counsel for the Appellants/Defendants, in the interest of justice, it is necessary to give one opportunity to the Defendants to put up their case.

7. Under these circumstances, the judgment and order dated 23rd July, 2013 passed by the learned Judge, City Civil Court, Mumbai in Suit No. 9206 of 1994 is hereby set aside.

8. The matter is remanded to the trial Court. The parties to appear before the learned Principal Judge, City Civil and Sessions Court, Mumbai on 18th January, 2016 at 11.00 am and the learned Principal Judge may assign the matter to the appropriate Court.

9. The Appellants to pay the cost of Rs. 15,000/- to the Respondent/original Plaintiff on or before 18th January, 2016.

10. The matter is to be decided expeditiously on or before 7th March, 2016.

11. First Appeal is accordingly disposed of.

12. In view of above, Civil Application does not survive and accordingly disposed of.

(MRS.MRIDULA BHATKAR, J.)