

JPP

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

***APPEAL FROM ORDER NO. 588 OF 2014
WITH
CIVIL APPLICATION NO. 711 OF 2014***

Mr. Narendrakumar R. Paurana. ... Appellant/Applicant.

V/s.

Life Insurance Corporation of India and Anr. ... Respondents.

Mr. Harshad Bhadbhade a/w. Anwar Landge for the
Appellant/Applicant.

Mr. Naval Tanwar i/b. Shukla & Shukla for the Respondent 2.

CORAM : N.M. JAMDAR, J.

DATE : 31 MARCH, 2016.

P.C. :-

This Appeal challenges the order passed by the City Civil Court in Notice of Motion No. 2926 of 2010 dated 2 July 2011 dismissing the Notice of Motion taken out for condonation of delay of 590 days in setting aside dismissal of the suit on 9 February 2009.

2. The Appellant filed a Suit against his cousin sister on the ground that father of the Appellant had initially nominated the Appellant for getting commission and gratuity in respect of Life

Insurance Corporation and agency code. In the Suit the Appellant prayed that the Life Insurance Corporation should not pay the amount to his cousin sister. The Suit was instituted on 16 July 2008. The Appellant was directed to serve the Respondent but in spite of repeated opportunities, the Appellant did not do so and the Suit was dismissed on 9 February 2009. Thereafter, the Appellant took out the Notice of Motion for restoration after delay of 590 days. The City Civil Court did not accept the explanation given by the Appellant for delay of 590 days and rejected the Notice of Motion by the impugned order dated 2 July 2011. Thereafter, the Appeal from Order was filed with delay of 180 days. The Civil Application for condonation of delay in this Appeal was granted. The Civil Application was opposed by the learned Counsel for the Respondent. Thereafter, the Appeal appeared on board on 10 February 2015. None had appeared for the Appellant and the matter was kept for dismissal. Thereafter, again on 16 March 2016 none appeared for the Appellant and the matter was adjourned. By order dated 30 March 2016, the matter was kept today by way of last chance. Even today the matter had to be kept back. After this the learned Counsel for the Appellant appeared.

3. Heard the learned Counsel for the parties. The learned Counsel for the Appellant submitted that the Appellant has good case on merits and he should be given opportunity to prosecute the Suit. He submitted that the Appellant is a Senior Citizen and

has an ailing daughter.

4. The same argument was advanced before the City Civil Court as well. If the conduct of the Appellant is seen, right from the institution of the Suit till the Appeal from Order is of complete negligence. The Suit was dismissed because the Appellant did not taken steps to serve the Defendants. Thereafter, the restoration was sought after 590 days. The Appeal was filed with delay and it is kept pending, without being argued, and adjourned because of the absence of the Advocate. Therefore, the delay of 580 days is not isolated but is a part of continuous neglect. The Suit is filed against the cousin sister who has to attend to the proceedings. By instituting and prosecuting the Suit in such manner the Appellant has caused harassment to the Respondent. A litigant must be diligent when he seeks to institute legal proceedings. No equity shall flow from such complete negligence. There is no error therefore in the discretion used by the learned City Civil Court in not condoning the delay. In fact, the conduct of the Appellant in this Appeal has reinforced the finding that the Appellant was negligent in prosecuting the litigation.

5. The Appeal is accordingly dismissed, with cost of Rs.5,000/-, to be paid to the Respondent No.2 within period of four weeks from today.

(N.M. JAMDAR, J.)