

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4665/2014

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. Ajay Basutkar for the petitioner
Ms. Uma Sharma i/b. Dharam & Co. for the respondent

CORAM : K. K. TATED, J.

DATE : AUGUST 30, 2016

P.C.:

1. Heard. By this petition, the petitioner challenges the order dated 31.01.2014 passed by the Bombay City Civil Court, Mumbai in Contempt Petition No.8/2012 in Suit No.623/2011.

2. The learned counsel for the petitioner submits that initially, the Contempt Petition was filed by the respondent on the Original Side of this court. He submits that the said Contempt Petition was on board before this court (Coram : R. P. SondurBaldota,J.) on 28.09.2012. On that day none appeared for the petitioner. Hence, this court dismissed the Writ Petition for default. Said order reads thus:

“None present for petitioner. Petition dismissed for default.”.

3. Thereafter the suit No.623/2011 was transferred to the Bombay City Civil Court, Mumbai. The petitioners were under impression that the Contempt Petition was already disposed of. Hence, there is no question of remaining present before the Trial Court. He submits that the matter appeared before the Trial Court on 31.01.2014 . On that day, none appeared on behalf of the petitioner - original defendant. The Trial Court decided the Contempt Petition on its own merits. He submits that as soon as they learnt about the order passed by the Trial Court, they filed the present petition challenging the said order dated 31.01.2014. He submits that by mistake, it remained on the part of the petitioner to place on record before the Trial Court that the Contempt Petition was already dismissed by order dated 28.09.2012. He submits that in the interest of justice, the impugned order dated 21.01.2014 be set aside.

4. On the other hand the learned for the respondent original plaintiff submits that as soon as they learnt that the Contempt Petition was already dismissed by this court on 28.09.2012 they filed an application before this court for restoration. Same is pending.

5. Considering the submissions made by the learned counsel for the parties and the fact that the Contempt Petition No.8/2012 was dismissed for default on 28.09.2012 and thereafter the Trial Court decided the same on merits by order dated 31.01.2014, I am satisfied that the petitioner has made out a case for allowing this Writ Petition because the Trial Court decided the Contempt Petition, which was dismissed for default.

6. Hence, following order is passed:

- a. Order dated 31.01.2014 passed by the Bombay City Civil Court, Mumbai in Contempt Petition No.8/2012 is set aside.
- b. Liberty granted to the respondent plaintiff to press their application for restoration of the Contempt Petition on its own merits.
- c. Writ Petition stands disposed of accordingly.

JUDGE