

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

***APPEAL FROM ORDER NO. 755 OF 2014***

Sandhya Ashok Bhanushali

... Appellant

v/s

Bahadur Ismail Damani  
(since deceased, through legal heirs)

... Respondents

Mr.Hemant Ghadigaonkar for the appellant.

Mr.Ajit Karwande for Respondent Nos.1A to 1C.

***CORAM: N.M. JAMDAR, J.***

***DATED : 21 MARCH 2016***

***P.C.:***

Admit. Taken up for disposal forthwith, by consent.

2 The appeal challenges the order passed by the City Civil Court, Mumbai, dated 10 February 2014, dismissing the Notice of Motion No.1662 of 2013, for restoration of the suit.

3 Suit No.3789 of 2008 was initially filed on the original side of this Court, which, due to change in the pecuniary jurisdiction of the Court, was transferred to the City Civil Court. The suit was re-numbered as Suit No.3789 of 2008. The suit came up on board of the learned City Civil Court Judge on 8 February 2013 when it was

dismissed for default. Notice of Motion No.1662 of 2013, which was for restoration and the condonation of delay of 45 days, has been rejected by the learned City Civil Court Judge by the impugned order.

4 Perused the impugned order and the notice of motion taken out by the Appellant.

5 Heard learned counsel for both sides.

6 The reason given for restoration by the Appellant was, lack of communication with the advocate who was representing him in the High Court after the transfer of the suit to the City Civil Court. The Appellant has also placed on record that there was uncertainty and confusion in his mind after the suit was transferred from this Court to the City Civil Court. This reason cannot be stated to be an impossible one. The Appellant also cannot be considered as negligent in prosecuting his cause as the delay was only of 45 days', which occurred in the above mentioned circumstances.

7 I am of the opinion, therefore, that an opportunity ought to have been given to the Appellant to prosecute the suit on merits. The learned City Civil Court Judge has passed an order primarily on the ground that the application for restoration was not within 30 days from the date of dismissal, however, has not considered that the cogent reasons were given for the delay.

8 In the circumstances, the appeal deserves to be allowed. Accordingly, the order passed by the learned City Civil Court Judge dated 10 February 2014 is quashed and set aside.

9 Notice of Motion No.1662 of 2013 is allowed. Suit No.3789 of 2008 stands restored to the file of the City Civil Court, Mumbai, to be disposed of on its own merits, subject to the Appellant paying costs of Rs.5,000/- to the Respondent within a period of two weeks from today.

10 Parties will appear before the City Civil Court on 11 April 2016.

**( N. M. JAMDAR, J. )**