

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

**APPEAL FROM ORDER NO.1163 OF 2015
along with
CIVIL APPLICATION NO.1461 OF 2015
in
APPEAL FROM ORDER NO.1163 OF 2015**

Mrs.Shanti Gangaram Dubey & Ors. .. Appellants
Vs.
Ashok T. Sadarangani & Ors. .. Respondents

Mr.A.S. Sayyed a/w Mr. A.A. Mirza for the appellants.
Mr.Farhan Khan a/w Mr.R.R.Shah for the respondents.

CORAM : R.D. DHANUKA, J.
DATE : 11th January 2016

P.C.

. By this appeal from order, the appellants have impugned the order dated 22nd July 2015 passed by the learned trial Judge dismissing the notice of motion by which the appellants (original plaintiffs) had prayed for restoration of the suit which was dismissed for default. The suit was filed in the year 2009.

2. It is the case of the appellants that the appellants could not remove office objections in the said suit. The said suit was dismissed initially by the Prothonotary and Senior Master on 7th October 2009. The appellants, thereafter, filed a Chamber Summons which was allowed by an order dated 12th September 2013. The appellants were directed to remove office objections within two weeks. The suit was restored on the condition that the office objections would be removed within two weeks. Admittedly, the suit was transferred to the City Civil Court, Dindoshi

before the said order in Chamber Summons was passed. It the case of the appellants that the appellants were not aware of transfer of the suit from this High Court to the City Civil Court, Dindoshi and were making inquiries with the learned counsel representing the appellants. No sooner the appellants have come to know about dismissal of the suit, the appellants have filed a suit praying for restoration of suit. The appellant no.1 is 80 years old.

3. Learned counsel for the respondents (original defendant) have resisted the said suit filed by the appellants and states that no case is made out for restoration of the suit. He submitted that though the suit was dismissed first time in the year 2009, the appellants did not remove office objections though an opportunity was rendered by the Prothonotary and Senior Master. He submits that no case is thus made out for interference in the order passed by the learned trial Judge.

4. Learned counsel appearing for the appellants submits that office objections could not be removed for various reasons which were recorded in the affidavit in support of notice of motion and undertakes to remove office objections within two weeks from today.

5. There is no dispute that when the order in Chamber Summons was passed by the Prothonotary and Senior Master, the suit was transferred to the City Civil Court, Dindoshi. Though the reasons recorded in support of notice of motion are not fully satisfactorily explained, in view of the fact that the appellants have now undertaken to remove office objections within two weeks from today and have agreed

to pay reasonable costs which will be awarded by this Court, I am of the view that the order passed by the learned trial Judge refusing to restore the suit can be set aside on the condition that the appellants pay cost of Rs.30,000/- to the respondents within two weeks from today and on undertaking that all the office objections will be removed within two weeks from today.

6. I therefore pass the following order :-

- (i) The impugned order dated 22nd July 2015 is set aside on the condition that the appellants pay cost of Rs.30,000/- to the respondents within two weeks from today ;
- (ii) Undertaking of the appellants to remove all office objections within two weeks from today is accepted;
- (iii) It is made clear that if all office objections are not removed within two weeks from today, the suit shall stand dismissed without further reference to the Court;
- (iv) It is made clear that no further extension would be granted;
- (v) Notice of Motion No.2967 of 2013 filed by the appellants is allowed ;
- (vi) S.C. Suit No.673 of 2013 is restored to file;
- (vii) Appeal is disposed of in aforesaid terms;
- (viii) In view of disposal of the appeal, civil application does not survive and is accordingly disposed of.

R.D. DHANUKA, J.