

vks

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER (ST) NO.29698 OF 2016
WITH
CIVIL APPLICATION (ST) NO.29700 OF 2016
IN
APPEAL FROM ORDER (ST) NO.29698 OF 2016

Mushtaq Ahmed Shah Appellant.

V/s.

Municipal Corporation of Greater Mumbai Respondent

Mr. A. M. Saraogi, for the Appellant.

Mrs. Madhuri More, for the Respondent Corporation.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 24TH OCTOBER, 2016.

P.C. :

1. This appeal is preferred from the order dated 21.10.2016, passed by City Civil Court, Mumbai, thereby rejecting Notice of Motion No.3049 of 2016, taken out by the appellant for restoration of the suit bearing No.3128 of 2013 which was dismissed for default on 11th March, 2016. It is submitted by learned counsel for appellant that in the pending suit, Notice of Motion No.2615 of 2013 was allowed and during pendency of the suit, respondent Municipal Corporation was restrained from demolishing the suit structure in pursuance of Notice dated 24.10.2013.

Accordingly advocate for appellant thereafter informed that as and when suit will come up for hearing, he will inform the appellant and therefore, appellant was under impression that his presence was not required and therefore did not remain present. However, the suit came to be dismissed for default on 11.3.2016. He came to know about the same only when he received notice issued by the Municipal Corporation on 13.10.2016, informing him that as his suit is dismissed for default, necessary action of demolition of the suit structure will be taken against him. Immediately after receipt of the notice. The appellant approached the trial Court and filed Notice of Motion No.3049 of 2016 seeking restoration of the suit.

2. It is urged that trial Court, has however, dismissed the said Notice of Motion. Learned counsel for appellant submits that the appellant is ready to pay costs for the delay, if this Hon'ble Court deems fit. However, his application for restoration needs to be allowed.

3. Learned counsel for respondent corporation resisted this appeal, on the count that the suit came be dismissed for negligence and for non attendance of the appellant. No valid reason is given for the same and hence when the trial Court has rightly dismissed the suit for default and trial Court has also dismissed Notice of Motion for the reasons given

in the impugned order, no interference is warranted in the said order.

4. The only ground which the appellant has given for remaining absent in the suit, is that his advocate informed him that his presence was not required and therefore, he did not attend the court. It is pertinent to note that on 11.3.2016, when the matter was called out, neither his advocate nor appellant himself remained present. Even when lastly called out at 5.35 p.m. nobody remained present. Therefore, the trial Court observed that if appellant is not interested to proceed with the suit, it is dismissed. It is significant to note that even after dismissal of the suit on 11.3.2016, appellant has not made any enquiry about the suit or its progress in the trial Court. Therefore, allowing himself to remain absent and to blissfully ignore the matter, the only cause for the same appears that he had already got order of ad-interim relief in his favour in the year 2014 itself. No explanation is offered as to why he did not take instructions from his advocate about the progress of the suit and surprisingly and significantly, affidavit of advocate, who has told him that his presence is not required is not at all filed. Therefore, it is clear that by putting the entire blame with advocate, without giving him any opportunity to explain, now the matter is sought to be restored and again to obtain relief of ad-interim injunction restraining respondent corporation from taking any action against illegal and unauthorized construction.

5. In my considered opinion, therefore, the trial Court has rightly held that no reasonable cause is given by the appellant either for the delay caused in preferring the appeal for restoration of suit or for remaining absent on the date on which suit came to be dismissed. Hence no interference is warranted in the impugned order passed by the trial Court. The appeal, therefore, holds no merit, hence stands dismissed.

6. Learned counsel for appellant at this stage, requests for protection of six weeks, in order to enable him to approach the Hon'ble Supreme Court. However, in my considered opinion, no ground is made out to grant this request also. Hence rejected.

[DR. SHALINI PHANSALKAR JOSHI, J.]