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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) No. 963 OF 2015
IN
NOTICE OF MOTION (L) No. 3537 OF 2015
IN
SUIT (L) No. 1197 OF 2014
WITH
NOTICE OF MOTION (L) No. 3693 OF 2015

Hubtown Ltd. & Anr. ... Appellants / Applicants
Vs.
Paresh Jayantilal Shah & Ors. ... Respondents

Mr. S. C. Naidu a/w Pooja Thorat, for the Appellants.
None for the Respondents.

CORAM : V. M. KANADE, &
REVATI MOHITE-DERE, JJ.
DATE : FEBRUARY 1, 2016

PC.

1. The Appellants are challenging an order of learned Single Judge dated 23rd December, 2015. By the said order, learned Single Judge was pleased to condone the delay in taking out the motion for restoration of the suit, which was dismissed for want of prosecution by the Prothonotary and Senior Master, under Original

Side Rules, 986. The learned counsel for the Appellant has submitted that there was a gross unexplained delay caused in filing the notice of motion. The learned counsel has submitted that the learned Single Judge in the impugned order has mentioned that the explanation given in the affidavit in support of the motion is not satisfactory. He has, therefore, submitted that the discretionary powers are not properly exercised by the learned Single Judge, since the delay has been condoned without considering the sufficient cause. The learned counsel has invited our attention to the chronology of dates and events. He has submitted that time to pay court-fees was extended from time to time, and even after the suit was rejected on 8.4.2015 no steps were taken for almost 4-5 months. In support of this submission, the learned counsel for the Appellants has relied upon a judgment of the Apex Court in the case of – **Basavraj & Anr., Appellants Vs. The Spl. Land Acquisition Officer, Respondent [AIR 2014 Supreme Court 745]**.

2. We have perused the impugned order. In paragraph 2 of the said order, learned Single Judge has mentioned that the explanation which is given by the Plaintiff is not satisfactory.

However, that observation has to be taken into consideration not literally but alongwith other circumstances and submissions made by the learned counsel appearing for the Respondents / original Plaintiffs.

3. In the present case suit was dismissed for want of prosecution by the Prothonotary & Senior Master while exercising the powers under Original Side Rules 986. The learned Single Judge was pleased to award cost of Rs. one lakh, to be paid within a period of three weeks from the date of the order. It is an admitted position that the said cost has been paid by cheque to the Appellants, though the said cheque has not been deposited in the bank. In our view, the learned Single Judge has exercised the discretion which is vested in him while condoning the delay caused in filing the motion for setting aside the order passed by the Prothonotary & Senior Master under O.S. Rules 986. There cannot be any manner of doubt regarding ratio of the judgment on which reliance is placed by the learned counsel appearing on behalf of the Appellants. However, in the present case the ratio of the said judgment will not apply to the facts of the present case. We do not see any reason to interfere with the said order. Appeal is, therefore, dismissed.

4. In view of dismissal of the appeal, Notice of Motion (L) No. 3693 of 2015 filed therein does not survive, and is accordingly disposed of.

Sd/-
[REVATI MOHITE-DERE, J.]

Sd/-
[V. M. KANADE, J.]

Vinayak Halemath