

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 84 OF 2017
WITH
CIVIL APPLICATION No. 115 of 2017

Mrs. Nilima S. Satam

.. Appellant

vs.

Raghunath P. Shetty and ors.

.. Respondents

Mr.P.J. Thorat for the Appellant.

Mr. Sameer Bhalekar for Respondent Nos.2 to 5.

CORAM : M. S. SONAK, J.

DATE : 14 MARCH 2017.

P.C. :-

1] Mr. Thorat, learned counsel for the appellant states that presence of respondent No.1 and 6 is not necessary for the purposes of this appeal and accordingly, he seeks to delete their names. Deletion is permitted. Necessary amendment to be carried out forthwith.

2] With the consent of and at the request of learned counsel for the parties, the appeal from order is taken up for final disposal at the stage of admission itself.

3] The challenge in this appeal is to the order dated 12 January 2017, by which, learned Trial Judge has dismissed the appellant's Notice of Motion No. 3367 of 2016 and set aside the order dated 21 September 2016, by which, the suit came to be dismissed for non-prosecution.

4] If the order dated 21 September 2016 is perused, it does appear that the appellant, despite opportunities, was not vigilant enough in pursuing the suit. There were directions from this court for expeditious disposal of this suit by end of December 2015. In such circumstances, it was expected that the appellant to pursue the matter with necessary amount of vigilance.

5] Although, aforesaid is the position, it is required to be noted that there were deaths of the parties and some time was spent in order to bring on record the legal representatives. The appellant also had some medical issues on account of which the matter could not be persuaded. There was also an issue of return of certain documents from the Small Causes Court. Although, the appellant ought to have been more vigilant in the matter, the conduct of the appellant is not such as warrants grant of yet another opportunity to her, subject of course to the payment of costs.

6] In the aforesaid circumstances, the orders dated 12 January 2017 and 21 September 2016, are hereby set aside and the appellant's suit is restored to the file. The appellant shall pay costs of Rs.10,000/- to respondent Nos.2 to 5 within a period of two weeks from today. Such costs to be deposited before the Trial Court within a period of two weeks from today and respondent Nos.2 to 5 shall be at liberty to withdraw the same unconditionally. In case, the costs are not deposited, this appeal shall be deemed to have been dismissed.

7] In case, the costs are deposited and the suit stand restored, the Trial Court, is directed to dispose of the same as expeditiously as possible and in any case on or before 31 December 2017. Both parties are directed to cooperate in the matter of expeditious disposal of the suit. In particular, the appellant should not delay the suit for seeking any unnecessary adjournments.

8] The appeal is disposed of in the aforesaid terms.

9] Upon disposal of the appeal, nothing survives in the civil application and the same is also disposed of.

10] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)

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