

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.824 OF 2017

IN

WRIT PETITION NO.11719 OF 2016

Dinesh Arora

....Applicant

Vs.

Upinder D. Arora

....Respondent

Mr. J.P. Kharge, i/by Mr. K.I. Mirde for the applicant.

Ms. Sandhya Maillagir, i/by Mr. A.D. Joshi for respondent No.1.

CORAM : K.K. TATED, J.

DATE : 12th July, 2017

P.C. :

1. Heard the learned counsel for the parties.
2. As per the earlier order dated 21.06.2017, the applicant has filed an affidavit in support of Civil Application No.824/2017. This application is for recalling the order dated 03.02.2017 passed by this Court, by which the petition stands dismissed for non-prosecution.
3. The learned counsel for the applicant submits that on 03.02.2017 when the matter was called out, the advocate on record was held up before the Division Bench and no one was present. Therefore, in the interests of justice, this Hon'ble Court be pleased to recall the order dated 03.02.2017 and restore the Writ Petition No.11719/2016 to file for hearing on merits. He submits that if the matter is not restored for hearing on merits, irreparable loss would be caused to the applicant.

4. On the other hand, the learned counsel appearing on behalf of the respondents vehemently opposed the present civil application. She submits that the applicant has not disclosed cogent reason for recalling the order dated 03.02.2017 by which the petition stands dismissed for non-prosecution. Hence, there is no substance in the present civil application and the same be rejected with costs.

5. I have heard both the sides.

6. It is to be noted that, when the matter was called out on 03.02.2017, the advocate on record was held up before the Division Bench of this Court. The said statement is made by the applicant on a solemn affirmation. Because of mistake on the part of the advocate, a litigant should not suffer.

7. Considering these facts, I am satisfied that the applicant has made out a case for allowing this civil application.

8. It is to be noted that, in the order dated 03.02.2017 this Court has recorded that the matter was listed for admission on 25.01.2017. On 25.01.2017 when none appeared for the petitioner, the matter was adjourned to 03.02.2017. On that day also, none appeared on behalf of the applicant.

9. Considering these facts, I am of the opinion that the applicant shall pay costs of Rs.10,000/-. Hence, the following order.

ORDER

(i) The order dated 03.02.2017 passed by this Court in Writ Petition No.11719 of 2016 is recalled.

(ii) Writ Petition No.11719 of 2016 is restored to file for hearing on merits.

(iii) The applicant to pay costs of Rs.10,000/-.

(iv) Costs to be deposited in the office of the “Kirtikar Law Library” within four weeks from today and place on record the receipt to that effect, failing which Civil Application shall stand dismissed without referring back to the Court.

(v) Civil Application stands disposed of accordingly.

(K.K. TATED, J.)