

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

APPEAL FROM ORDER NO. 226 OF 2016  
A/W.  
CIVIL APPLICATION NO. 304 OF 2016  
IN  
APPEAL FROM ORDER NO. 226 OF 2016.

M/s. Patel Punit Builders Pvt.  
Ltd. & Ors.

..Appellants

v/s.  
CIDCO of Maharashtra Ltd.  
& Anr.

..Respondents

Mr. Akhilesh Dubey a/w. Mr. Nishant Tripathi and Vibhva Bandgar i/b.  
M/s. Tripathi & Co. for the Appellant/Applicant.  
Mr. Ashutosh Kulkarni for the Respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.  
DATED : 20<sup>th</sup> JUNE, 2017.**

**P.C.**

1. Heard. By consent of parties, taken up for final hearing at the stage of admission.
2. The appellant herein has challenged the Order dated 8<sup>th</sup> January, 2016, whereby the learned Civil Judge, Senior Division, Thane, has dismissed the application for restoration of the Special Civil Suit No. 705 of 2010.

3. Heard the learned Counsel for the appellant and the learned Counsel for the respondent. The records reveal that the appellant had filed a suit for declaration. The respondent no.1 had filed written statement. Issues were framed on 8<sup>th</sup> February, 2012 and the matter was fixed for evidence on 30<sup>th</sup> March, 2012. The case was adjourned on couple of dates for hearing at the request of the appellant and finally the learned Judge dismissed the suit for non prosecution. The appellant herein had filed application for restoration. The learned Judge, without considering whether the appellant had made out sufficient ground for restoring the suit, has infact dismissed the suit on the ground that the cause of action does not survive. Needless to state that the only issue which was required to be considered was whether the ground set out by the appellant herein was sufficient to restore the suit. The impugned order, therefore, cannot be sustained and is required to be set aside.

4. Be that as it may, the reasons set out by the appellant in paragraph 5 of the application, in my considered view, constitute sufficient ground to restore the suit.

5. Hence, the appeal is allowed. The impugned order is set aside.

The suit is ordered to be restored. The learned trial Judge to proceed with the suit on merits.

6. In view of disposal of the appeal from order, the civil application does not survive and the same is also disposed of.

**(ANUJA PRABHUDESSAI, J.)**