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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION ST NO. 11292 OF 2017
IN
APPEAL FROM ORDER NO. 306 OF 2011

Madhukar Anant Patkar	...Applicant
<i>Versus</i>	
Ravi Ramlal Talwar	...Respondent

Mr Pradeep Havnur, *for the Applicant.*
Mr Gautam Mehta, *with Amit Bhawe & Vinod Sakpal, i/b Milan*
Bhise & Co., for Respondent No. 1.

CORAM: G.S. PATEL, J
DATED: 21st June 2017

PC:-

1. This is a Civil Application that seeks two reliefs: first, that the delay of three years and five months in filing the Civil Application be condoned and, second, that an order dated 22nd October 2013 (Anoon V Mohta J) dismissing the Appeal be recalled and the Appeal be restored to file.

2. To begin with, the order of 22nd October 2013 itself notes that the Appeal was even dismissed once before. It was restored by a previous order of 24th September 2013, and that too after a delay of a year. Yet no steps had been taken to serve the Respondents.

3. I might have been persuaded to pass over all of that had there been some semblance of a case made out for restoration. Paragraphs 3 and 4 of the Civil Application say this:

"3. The Applicants state that after admission of the abovesaid Appeal, the same could not appear on the board for long time. The Applicants state that thereafter they also could not contact their Advocate for certain period. The Applicants state that they being ignorant about Courts procedures and due to lack of legal knowledge, were totally dependent on their Advocate and office clerk for removing of the office objections. The Applicants state that due to non-removal of the office objections the conditional order dated 15.2.2011 came to be effected. The Applicants state that the so-called Respondents about 112 in numbers in the above said Appeal, most of them have settled their dispute and some consent terms came to be arrived between them and as such there is no need to serve the Appeal from Order upon them.

4. The Applicants state that in the month of March 2017 when they have enquired with their advocate regarding the status of the present Appeal, it has come to their knowledge that the present Appeal came to be dismissed for want of prosecution by order dated 22.10.2013. Hereto annexed and marked as **Exhibit-A** is the copy of the order dated 22.10.2013. The Applicants further state that their Advocate on record Mr. M.S. Menon is in serious condition, on dialysis, kidney failure and as such since long their advocate on record was not feeling well, ill and as such the present Application could not be taken out at the earlier. The Applicants further state that recently in the month of February, 2017 the Execution Application No. 67 of 2015 taken out by the decree holder came to be allowed by order dated 18.2.2017 and only thereafter the

Applicants came to know that the Appeal filed by them came to be dismissed in default. The Applicants state that they have also taken out Review Petitions separately, which is pending before the Hon'ble City Civil Court."

4. This is being less than candid with the Court. What this does *not* tell us is that after the dismissal of this Appeal on 22nd October 2013, Respondents Nos. 1 to 3 filed three Execution Application Nos. 65 of 2015, 66 of 2015 and 67 of 2015 on 4th August 2015. In these Execution Applications the order of 22nd October 2013 was specifically referenced and the fact of dismissal of the Appeal was specifically mentioned. The Appellants, who today seek restoration saying they were unaware, ignorant, indigent, lacking in legal knowledge, deprived of resources, etc etc, were in fact fully aware of this at the time were seem to have been quite thoroughly represented by their earlier Advocate Mr Menon. They filed Affidavits in Reply on 9th October 2015 to the three Execution Applications. Their Advocate appeared for them throughout in those proceedings till as recently as 5th January 2017. The Execution Applications were disposed of on 18th February 2017 and these very Appellants then sought a stay of four weeks on 20th February 2017. This was granted. On 14th March 2017, the Appellants then filed three Review Application Nos. 8 of 2017, 9 of 2017 and 10 of 2017. These all came to be dismissed on 15th May 2017. On 14th June 2017 they filed three Writ Petitions as well in respect of the same subject matter. In the meantime, they filed this Civil Application for restoration.

5. From this narrative, which is nothing but a bare-bones reproduction of dates and filings without any mention of the merits of the individual cases filed (and there is no dispute about these litigation events), it is clear that what is stated in paragraph 3 of the present Civil Application is completely and wholly untrue. There, the Applicants say they are ignorant. They say they do not have legal knowledge. They say they were dependent on their Advocate and his office clerk. And they say it was in March 2017 that they first came to know of the dismissal of their Appeal. This statement is made on affirmation. It is alone sufficient to dismiss the Civil Application and to justify an order of costs. For it is false to the knowledge of the Appellants. And it is demonstrably false. The dismissal of the Appeal and Justice Mohta's order were specifically mentioned in the 1st Respondent's three Execution Applications filed three years ago on 4th August 2014. The appellants therefore knew of the order and the dismissal of this Appeal three years ago. They filed replies to and contested those execution proceedings. They could not have been unaware of the dismissal of order till March 2017 as it now contended. The statement about Mr Menon's health is one that I will accept, but this again is misleading for, until as recently as January 2017, Mr Menon was very much actively representing and advising the Appellants. It is most unfair for the Appellants to blame Mr Menon (paragraph 3) or to take advantage in this fashion of his recent serious health issues.

6. It is even more unfortunate that applications are made like this citing indigence, ignorance and ignorance, trying to gain sympathy from Court. The argument is the usual one: *a party should not suffer for the fault of his lawyer*. But there is no fault of the lawyer.

Mr Menon served their cause diligently, perhaps even aggressively. The statements about the Appellants being unaware of the dismissal order are shown to be untrue to the Appellants' knowledge.

7. Now I am told these Appellants live hand-to-mouth. Poverty is neither an excuse nor an alibi for dishonesty.

8. To my question why costs ought not to be imposed while dismissing the Civil Application, Mr Havnur pleads for clemency. Only because he does not press this application and, in fairness, has not attempted to controvert the incontrovertible, I will not impose costs. Had it been otherwise, costs would have followed, and they would have been severe.

9. It does not stop at this. It is unclear how Appellant No. 3 is shown as such. Admittedly she was not a party to the proceedings in the Court below. She was neither plaintiff nor defendant. She has been introduced into the appeal without leave. This remains unexplained.

10. This Civil Application is a gross abuse of the process of the Court. It is dismissed. As an exceptional case, no costs.

(G. S. PATEL, J)