

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

**CIVIL APPLICATION NO. 869 OF 2016
IN
APPEAL FROM ORDER NO. 1366 OF 2010**

Akshat Sanjay Agarwal & Anr.	...Applicants/Appellants
Vs.	
Sanjay Rameshchandra Agarwal & Ors.	...Respondents

Mr.Faran Khan I/b. Sheela K. Mistry for Applicants.
Ms.Shirin Shaikh I/b. Raval Shah & Co. for Respondent No.11.

CORAM : S.C. GUPTE, J.

19 APRIL 2017

P.C. :

Heard learned Counsel for the parties.

2 This civil application is for restoration of an AO, which was dismissed for default of appearance on the part of the Applicants / Appellants. The AO, which was dismissed for default, was from an order passed by the City Civil Court at Bombay on 22 October 2010 dismissing the Applicants' suit on the ground that the court did not have pecuniary jurisdiction to deal with the suit.

3 Considering the fact that now the pecuniary jurisdiction of the City Civil Court has been increased and the suit would lie before it, learned Counsel for the Applicants prays not only for restoration of the AO, but also for its being allowed finally on the basis that the City Civil Court does have jurisdiction to entertain and try a suit.

4 Learned Counsel for Respondent No.11, who is the main contesting Respondent (since the reliefs claimed in the suit really operate only against Respondent No.11), has no objection to this course being adopted. She however, prays for costs being paid to her client of this application.

5 Learned Counsel for the Applicants leaves the matter of costs to the court.

6 In the premises, the following order is passed :

(I) Civil Application No. 869/2016 is allowed by condoning the delay in terms of prayer clauses (a) and (b);

(II) Appeal from Order is taken up on board. The AO is admitted and taken up for final hearing, by consent of parties forthwith;

(III) Considering the fact that whatever be the merits of the impugned order passed by the City Civil Court at Bombay, now that the pecuniary jurisdiction to deal with this suit does vest in that court, no useful purpose will be served by considering the appeal from order on merits. In any event, the Appellants would have to file a fresh suit in the City Civil Court at Bombay to redress their grievances and in that case, the City Civil Court at Bombay would anyway have to entertain such a suit. In the premises, the AO is allowed by setting aside the impugned order passed by the City Civil Court at Bombay on 22 October 2010. The notice of motion taken out by the predecessor of Respondent No.11 (original Defendant No.5 to the suit), namely, Dena Bank, is dismissed. It is held that the City Civil Court at

Bombay does have jurisdiction to entertain and try the suit filed by the Appellants herein.

(IV) The order passed by this court on 20 April 2016 discharging the Court Receiver by allowing Civil application No.1596/2013 is recalled and set aside. Respondent No.11 will, however, be at liberty to apply for discharge of the Court Receiver in the suit, if so advised, before the City Civil Court at Bombay in the pending suit. Liberty also to the Appellants to take out an appropriate application in this behalf.

(V) The Appellants shall pay costs quantified at Rs.30,000/- to Respondent No.11.

(S.C. GUPTE, J.)