

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER (St.) No. 20662 OF 2017
WITH
CIVIL APPLICATION No. 748 OF 2017 IN A.O. (ST.) No.20662 OF 2017**

Anil Dattaram Tawade ... Appellant/Applicant
Vs.
Prabhakar Govind Tawade & Ors. ... Respondents

Mr. Yogesh K. Deshpande a/w. Mrs. Meenakshi V. Adate, Advocate
for the appellant/applicant.

Mr. Suresh More, Advocate for respondent no. 1.

**CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 21st August, 2017.**

P.C.:

This Appeal from Order is directed against the order dated 23rd June, 2017 passed by the learned Judge of the City Civil Court, Mumbai in Notice of Motion No. 1231 of 2017 in S.C. Suit No. 663 of 2014 thereby rejecting the Notice of Motion.

2. The learned counsel for the respondent is present.
3. After hearing the parties, as the issue involved is short, this Appeal is disposed of on the first date of admission, by consent.
4. The respondent no. 1/plaintiff has filed the S.C. Suit No. 663 of

2014. The appellant/defendant no. 1 did not file written statement within time and therefore, the Court struck off the defence. Thereafter, by the order dated 26th July, 2016 the learned Judge of City Civil Court, Dindoshi, Mumbai allowed the Notice of Motion No. 423 of 2015. which was taken out by the appellant/defendant no.1 for setting aside the order of striking off defence and was allowed to file written statement subject to payment of costs of Rs.500/-. However, the said cost was not paid in time. Thereafter, the defendant no. 1 took out Notice of Motion No.1231 of 2017 requesting that the conditional order dated 26th July, 2017 be set aside and he be allowed to pay the cost and his written statement be taken on record. However, the learned Judge by the order dated 23rd June, 2017 dismissed the Notice of Motion No. 1231 of 2017. Hence, this Appeal from Order.

5. The learned counsel for the appellant submitted that his written statement is ready and already placed on record and the appellant may be allowed to deposit the cost.

6. The learned counsel for the respondent no. 1 opposed this Appeal.

7. Considering the dispute and the issue involved in this Appeal from Order, following order would meet the ends of justice:

- (i) The order dated 23rd June, 2017 in Notice of Motion No. 1231 of 2017 is hereby set aside;
- (ii) The order passed by the trial Court in Notice of Motion No. 423 of 2016 allowing prayer clause (a) is hereby restored subject to payment of cost of Rs.5,000/- on or before 24th August, 2017 to the plaintiff before the trial Court;
- (iii) If the cost is not paid on or before 24th August, 2017, then the order under challenge will be restored.

8. With this, Appeal from Order is disposed of. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)