

Atul

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER ST NO. 22342 OF 2015
WITH
CIVIL APPLICATION NO. 6 OF 2016

The State Bank of India	...Appellant
<i>Versus</i>	
M/s. Radiant Plastics	...Respondent

Ms Jyoti Tiwari, i/b VB Tiwari, for the Appellant.
Mr Ganesh L, i/b Prem Gidwani, for Respondent No. 1.

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

PC:-

1. For reasons that are sufficient explained, the delay of 41 days in filing the Appeal is condoned. The Civil Application is disposed of in these terms.

2. By consent, the Appeal is taken up for hearing and final disposal.

3. The Appellant-Bank filed a Notice of Motion to set aside an order dated 3rd February 2014 and restore Civil Suit No. 9966 of 1988 (transferred from the High Court). Before the Court it was

argued that on account of transfer of cases from this Court to the City Civil Court, the 2nd Defendant (present Appellant) lost sight of the matter.

4. The Plaintiff argued that the Suit had already been decreed against State Bank of India. An application under Order IX Rule 13 of the Code of Civil Procedure 1908 for setting aside the *ex parte* decree was rejected. I have by an order dated 19th June 2017 made in Appeal from Order No. 369 of 2017 allowed the Appeal against that order refusing to set aside the *ex parte* decree.

5. Both orders of the trial court are incorrect. I have already by a separate order allowed the appeal against the order declining to set aside the *ex parte* decree. The present application ought also have to be allowed. After all, there was before the Court a sufficient reason made out by the appellant; and the appellant is an instrumentality of the state, always within reach of the court's processes. The matter could have been and should have been decided on its own merits rather *ex parte*.

6. The Appeal succeeds. The impugned order is set aside. Suit No. 9966 of 1988 is restored to file. The State Bank of India and State Trading Corporation will file and serve their written statements, if not already done, on or before 17th July 2017. There will be no extension of time whatsoever for this purpose.

7. The matter will be listed before the Trial Court on 28th July 2017 for directions as to discovery, inspection and completion of other pre-trial formalities.

8. It is clarified that if the State Bank of India or the State Trading Corporation do not file their written statement in time, the previous *ex parte* decree may be forthwith restored.

9. The Appeal from Order is disposed of in these terms with no order as to costs.

(G. S. PATEL, J)