

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

APPEAL FROM ORDER (ST.) NO. 22266 OF 2017

Rajanikant Talakchand Mehta & Anr.

...Appellants

Versus

Nav Yashodhara Co-operative Housing
Society Ltd.

...Respondent

.....

Mr.Umesh Tawari i/b. S. Ashwinikumar and Co. for the Appellants.
Mr.P.S.Gautam h/f.Mr. M.R. Prasad for the Respondent.

.....

**CORAM: MRS.MRIDULA BHATKAR, J.
DATED: SEPTEMBER 15, 2017**

P.C. :

1. This Appeal from Order is directed against the order dated 05.07.2017 passed by the learned Judge, City Civil Court, Mumbai, in Notice of Motion No. 906 of 2016 thereby allowing Notice of Motion No. 906 of 2016 in Suit No. 423 of 1991.

2. The Suit filed by the respondent/plaintiff was dismissed on 17.06.2015 for want of prosecution and nearly after ten months, the Notice of Motion was taken out for restoration of the Suit with prayer of condonation of delay. The appellants/defendants have filed the reply to the said Notice of Motion and contested the same. The learned Judge

restored the Suit, subject to payment of costs of Rs. 10,000/- to be paid to the defendants.

3. Learned counsel for the appellants submits that the said order of restoration of the Suit is illegal and needs to be set aside. He further submits that the delay is not properly explained. He further submits that on a number of dates, the adjournments were given to the plaintiff to file the affidavit-in-chief, however, the plaintiff failed to file the same though the Suit was fixed for recording the evidence of the plaintiff. He further submits that there is an inordinate delay in prosecuting the Suit of the plaintiff. The learned Judge ought to have considered the provisions under Order 17 of the Code of Civil Procedure in respect of the delay in leading evidence. He further submits that no sufficient cause is shown to allow the delay and restore the Suit.

4. Per contra, learned counsel for the respondent submits that the counsel of the plaintiff is 81 years old and, therefore, it was not possible for him to remain present on every date and due to his negligence, the Suit was dismissed.

5. Heard submissions. Perused the order passed by the learned Judge, City Civil Court. It appears from the record that the plaintiff was litigating his matter. The counsel of the plaintiff is a senior citizen, who is 81 years old. He is a heart patient and having high blood pressure and due to his ill health, he could not lead the evidence before the Court. The learned Judge has rightly observed that the counsel of the plaintiff is negligent to proceed with the matter and lead the evidence. I am satisfied with the cause shown by the respondent/plaintiff to

condone the delay and restore the Suit. Hence, I pass the following order:

ORDER

- (i) Appeal from Order is dismissed.
 - (ii) The order of restoration and condonation of delay passed by the learned Judge, City Civil Court, Mumbai, is maintained, subject to payment of costs of Rs. 15,000/- to be paid to the defendants.
 - (iii) It is an old Suit of 1991. The trial Court is directed to expedite the matter within a period of one year from today.
 - (iv) Parties to co-operate with the trial Court.
6. Appeal from Order is dismissed accordingly.

(MRIDULA J. BHATKAR, J.)