

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

**APPEAL FROM ORDER NO. 527 OF 2015
WITH
CIVIL APPLICATION NO. 991 OF 2017**

Babibai Moreshwar Patil & Ors.

...Appellants/
Applicants

Versus

M/s. Om Enterprises & Ors.

...Respondents

.....

Mr.Mayur Khandeparkar and Mr. Limesh Tawari i/b. M/s. S. Ashwinikumar & Co. for the Appellants.

Mr.Abhishek A.Walawalkar for Respondent Nos. 1, 3 and 4.

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**CORAM: MRS.MRIDULA BHATKAR, J.
DATE : DECEMBER 08, 2017**

P.C.:

1. This Appeal from Order is directed against the order dated 3rd November, 2014 passed by the learned Judge, City Civil Court, Greater Mumbai in Notice of Motion No. 3160 of 2014 in Suit No. 3622 of 2008 (High Court No. 1040 of 2008) thereby dismissing Notice of Motion No. 3160 of 2014 with costs.

2. The appellants/plaintiffs have filed the Suit for cancellation, declaration and injunction against the respondents/ defendants.

Notice of Motion was taken out by the appellants/plaintiffs for restoration of the Suit, which was rejected by the order dated 15th February, 2014. There is delay of 120 days in taking out the said Notice of Motion for setting aside the dismissal order dated 15th February, 2014. The respondents/defendants had filed reply to the Notice of Motion, contesting the Notice of Motion.

3. Heard submissions of the learned counsel for both the parties. It appears from the submissions that the trial Court was satisfied with the reasons given for delay, however, was not satisfied with the reasons given for not attending the suit and, therefore, the trial Court did not restore the suit.

4. Learned counsel for the appellants has submitted that on the date of dismissal of the suit, it was fixed for framing of issues and it was inadvertently remained to be attended by the Advocate for the appellants/plaintiffs. Therefore, the suit was dismissed by the trial Court. It was bona fide mistake of the counsel who was attending the suit. He has pointed out that Advocate Prashant More and Advocate S.R.Mishra have appeared in the suit, but failed to file reply over the fact.

5. Learned counsel for respondent nos. 1, 3 and 4 while opposing this Appeal, has submitted that the appellants have not come before this Court with clean hands. He read over the facts filed by counsel, who appeared before the trial Court and pointed out the discrepancies and the reasons given by those counsel.

6. Be that as it may, the appellants/plaintiffs are prosecuting the suit since 2008. The respondents/defendants have filed the written statement. I am informed that all the pleadings are complete and now the matter is fixed for framing of issues. I am further informed that Advocate S.R. Mishra, who was attending the suit before the trial Court in between is expired.

7. In view of the above, in all fairness, the impugned order of dismissal of Notice of Motion is hereby set aside. The suit is restored to its original file alongwith orders and application, subject to payment of costs of Rs. 10,000/-. The said amount is to be deposited in the trial Court within a period of two weeks from today. The trial Court to hear the matter and conclude it preferably on or before 31st December, 2018.

8. Learned counsel for the appellants wants to withdraw the Civil Application and seeks liberty to approach before the trial Court.
9. Liberty is given to the appellants to seek appropriate relief before the trial Court.
10. With this, Appeal from Order is disposed of. Civil Application is also accordingly disposed of.
11. Parties to act upon an authenticated copy of this order.

(MRIDULA BHATKAR, J.)