

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

**CIVIL APPLICATION NO.3077 OF 2016
IN
WRIT PETITION NO.10772 OF 2015**

Mrs. Neelam Sushilkumar Gupta	..Applicant
Versus	
Mr. Sushilkumar Raghuvirprasad Gupta	..Respondent
Mr. D. H. Shukla for the Applicant.	
Mr. C. R. Shah i/by Mr. Rakesh Agrawal for the Respondent.	

**CORAM : R. M. SAVANT, J.
DATE : 25th JANUARY, 2017**

PC.

1 The above Civil Application has been filed for restoration of the above Writ Petition. The Writ Petition has been dismissed for non-prosecution on 23.11.2016 on account of the non-appearance of the Learned Advocate on the said day. The Petitioner had thereafter filed a Civil Application for restoration. However the Civil Application also came to be dismissed for non-prosecution on 29.11.2016 on account of the non-appearance of the Advocate appearing for the Petitioner. The Civil Application filed for restoration of the above Civil Application No.3077 of 2016 was allowed by this Court by order dated 19.01.2017, that is how the above Civil Application No.3077 of 2016 has come up for consideration. The reasons for the non-appearance of the Petitioner both

at the time of the dismissal of the Petition as well as at the time of the dismissal of the above Civil Application No.3077 of 2016 have been mentioned in the Civil Application and especially in paragraphs 5, 6, 7 and 8 of the Civil Application.

2 The sum and substance of the case of the Petitioner is that the advocate on record had assigned the job of attending the Writ Petition to a junior advocate who had just joined his chamber and that the junior Advocate was not aware of the listing of the matter and the Advocate on record was under a bonafide impression that the matter is being taken care by the junior Advocate and the clerk.

3 The said reason put forth by the Petitioner is questioned on behalf of the Respondent by filing an affidavit in reply, wherein a table has been reproduced in paragraph 5 indicating the events which have transpired from 16.03.2015. Having regard to the said table, it is required to be noted that the notice in the above Petition came to be issued on 18.08.2016. However the table also indicates that the Petitioner has removed office objections long after the Petition came to be filed. It appears that the notice issued was served upon the Respondent. In any event, the Respondent is now represented by Advocate.

4 Heard the Learned Counsel for the parties. Though some fault can be found with the Petitioner in the matter of removal of office objections as also in the matter of being represented on 23.11.2016 and 29.11.2016, the Petitioner has to be shown one final indulgence to be given a chance to prosecute the above Petition on merits. The same would obviously have to be on the pains of imposing costs on the Petitioner. The Civil Application is accordingly allowed and made absolute in terms of prayer clause (a). The Petitioner to pay costs of Rs.3000/- to be deposited with the Maharashtra State Legal Aid Fund within two weeks from date. List the Petition for admission on 09.02.2017 to be shown high on the regular board. The Learned Counsel for the Petitioner undertakes to furnish a copy of the Petition to Mr. Rakesh Agrawal the Advocate for the Respondent. The same to be done during the course of the week. The Civil Application is accordingly disposed of.

[R.M.SAVANT, J]