

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

**APPEAL FROM ORDER NO.16 OF 2015
WITH
CIVIL REVISION APPLICATION NO.182 OF 2015**

Arjan Motiram Khiani And Others ... Appellants
Versus
Metharam Rijhumal Khiani And Others ... Respondents

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Mr. Ramesh Soni a/w Mr. Archit Jayakar & Ms. Rahil Jhaveri i/b Jayakar & Partners for the Appellants.

Mr. Nitin Thakkar, Senior Advocate a/w Girish Godbole & Mr. G.C. Mohanty i/b Mohanty & Associates for Respondent Nos.1, 5 and 6 in Appeal from Order No.16 of 2015 and Applicants in Civil Revision Application No.182 of 2015.

Mr. Anil K. Lulla for Respondent No.3.

Mr. R.N. Kachare for Respondent No.7.

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CORAM : S.C.GUPTE, J.

DATE : 3 MAY 2017

P.C. :

. Heard learned Counsel for the parties.

2 This Appeal from Order challenges an order passed by the City Civil Court at Bombay, refusing to extend the time for payment of cost of an application for restoration of a suit under Order 9 Rule 13 of the Code of Civil Procedure ("Code"), which suit was dismissed earlier for default of appearance. It was the Plaintiffs' case in their application under Order 9 Rule 13 of the Code that their Advocates' name was not correctly shown on the board and as a result, they could not attend the hearing of the suit. In

the original order passed on the application under Order 9 Rule 13, the Court allowed the restoration of the suit, subject to payment of costs of Rs.3,000/- to each of the contesting Defendants within seven days of the order. The Court directed that in default of such payment, the order would stand cancelled automatically. It is the Plaintiffs' case that there was some miscommunication and this order was not noted in its exact terms. It is submitted that when the Plaintiffs learnt that they did not pay the costs within the stipulated period, they applied to the Court for extension of time for payment of costs. On this application, the impugned order came to be passed.

3 It may be seen from the impugned order that though the Court was not averse to extending the time for payment of costs, the order appears to have been passed on the basis that the Plaintiffs were not ready immediately, i.e. there and then to proceed with the recording of evidence in the suit. It is submitted by learned Counsel for the Appellants that on that particular date, since the application was only for extension of time for payment of costs and restoration of the suit, their witnesses were not present in Court and as a result, they could not go ahead with recording of evidence. On these facts, the grievance of the Plaintiffs in the present Appeal from Order seems to be justified. The Trial Court, in the circumstances of the case, ought to have extended the time and allowed the Plaintiffs to lead evidence on the next occasion. The Plaintiffs could not be non-suited simply on their inability to go ahead with the hearing of the suit on the date of their application for restoration of suit. In the interest of justice, in a matter like this, the Defendants could always be compensated adequately with further costs.

4 In the premises, the Appeal from Order is allowed by setting aside the impugned order passed by the City Civil Court at Bombay, on 25 November 2014 and extending time to deposit the costs originally awarded by the City Civil Court at Bombay for restoration of the suit. Such costs be deposited within three weeks from today. The Appellants/Plaintiffs shall also pay the costs of the present Appeal from Order quantified at Rs.10,000/- to each of the seven contesting Defendants within three weeks.

5 Since the suit is of the year 1981 and ripe for hearing, learned Counsel for all parties request the Court to expedite the hearing of the suit. At their request, the City Civil Court at Bombay, is directed to dispose of the suit within a period of one year from today.

6 Appeal from Order is disposed of, accordingly.

7 Learned Counsel for the Respondents submits that the civil revision application, namely, C.R.A. No.182 of 2015, filed by his clients, which challenges the original conditional order passed in their application under Order 9 Rule 13 of the Code, and which is directed to be heard along with this A.O., does not survive and the same may be disposed of. C.R.A. No.182 of 2015 is dismissed as not pressed with no order as to costs.

(S.C. GUPTE, J.)