

L.C. Suit No. 3106 of 2007.

3. By the impugned order, the learned court below has rejected the application for restoration, alongwith application for condonation of delay caused in moving the said application, as the applicant failed to demonstrate any reasonable cause and / or reason in approaching the Court within the period of limitation.

4. Learned counsel for the Appellant submitted that the court below ought not to have rejected the application since applicant was not keeping good health in the year 2010, therefore, he was unable to present himself before the Court on 7.7.2010, the date on which suit was dismissed. He submitted that alongwith the application, the medical papers of the applicant were also filed and those papers ought to have been considered by the learned court below and to have exercised discretion in favour of the applicant / Appellant.

5. Per contra, it is submitted by the learned counsel for the Respondent that no sufficient reasons are furnished before the court below by the applicant, and therefore, it could not be said that the order passed by the learned Judge, is perverse, warranting any interference from this Court.

6. The compilation of the present appeal shows that L.C. Suit No. 3106 of 2007 was filed by the applicant in the City Civil Court on 29.8.2007 alongwith the same, a notice of motion was taken for the temporary relief. Initially, ad-interim relief was not granted in favour of the Applicant. The suit proceeded on various dates. Ultimately, notice of motion taken by the applicant / original plaintiff was rejected finally on 10.2.2010. It appears from the record that the said order was not questioned before this Court.

7. Obviously, after rejection of the application for temporary relief, suit proceeded on its own merits. The record shows, as it is seen from the observations made by the learned Judge of the court below in the impugned order that the matter was kept on 7.3.2010, 7.6.2010 and lastly, 7.7.2010, on which dates the applicant and his counsel could not remain present and consequently, the order dismissal of suit was passed.

8. The application for restoration ought to have been filed within the period of limitation. However, the said application was filed after four years. No doubt true, the applicant in the said application has filed medical papers of his health, showing that he was suffering

from illness and in fact this is the main reason, which learned counsel for the Appellant is urging before this Court for restoration of the suit. It is crystal clear that those medical papers of the applicant were filed for the period January, 2010 to March, 2010. Thus, on 7.7.2010 there was no impediment for the plaintiff to remain present or his advocate before the court. Since, the medical papers are filed till March, 2010. In my view, the learned Judge, was right in observing that there is nothing to show that on the date when the suit was dismissed, the applicant was suffering and / or labouring under any medical problem. Further, there is no explanation whatsoever of any nature as to why from 7.7.2010 till date when the application was filed in the year 2017 he could not move the court for restoration. It is a cardinal principle of law that law will extend helping hand to the diligent litigants. Since, the applicant has failed to demonstrate any sufficient cause for his absence on the date when his suit was dismissed and further failed to point out as to why he could not file application within the stipulated period and has not furnished any plausible reason which restrained him from approaching the court for appropriate relief, in my view, the learned Judge of the Court below was right in his wisdom in not

exercising the discretion in favour of the applicant / appellant. The order impugned herein does not suffer from any illegality or perversity. Hence, appeal is dismissed with no order as to costs.

Sd/-
[V. M. DESHPANDE, J.]

Vinayak Halemath