

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER No. 1205 OF 2015
WITH
CIVIL APPLICATION NO. 1527 OF 2015 IN A.O. NO. 1205 OF 2015**

Pankaj Kishor Shah ... Appellant/Applicant

Vs.

Naresh Purshottam Khetan ... Respondent

Mr. G.S. Godbole a/w. Yatin R. Shah, Harshya R. Shah, Niranjana Deshpande, Advocate for the appellant/applicant.

Ms. Sunita M. Poddar, Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 9th February, 2018.

P.C.:

S.C. Suit No. 8972 of 2000 is dismissed for want of prosecution on 15th November, 2014. On the same day, the learned counsel for the plaintiff/appellant moved an Application for restoration under Order 9 Rule 9 of the Code of Civil Procedure. The same was rejected by the trial Court by stating grounds that the plaintiff has not complied with its orders. Hence, this Appeal.

2. At the outset, it is mentioned that earlier one Chamber Summons taken out by the plaintiff/appellant was rejected by the trial Court by order dated 19th September, 2014. In this Appeal, the prayer in respect of rejection of that order is also made, however, except the

order of restoration of the suit, no other prayers can be entertained.

3. The learned counsel for the appellant has submitted that on the same day the application for restoration of the suit was made. He submitted that the facts mentioned in paragraph (A) of the impugned application about filing of Notice of Motion No. 1932 of 2014 are incorrect.

4. The learned counsel for the respondent has submitted that this Appeal is not maintainable under Order 9 Rule 9 of the Code of Civil Procedure because the dismissal of suit is not for want of prosecution but the suit is dismissed because the orders of the trial Court were not complied with by the plaintiff and the plaintiff has avoided to come to the Court.

5. Perused the impugned application for restoration moved by the original plaintiff on 15th November, 2014, i.e., immediately after the dismissal of the suit, so also the order of dismissal which is passed in two parts. In the first part, the trial Court has dismissed the suit for want of prosecution, as the plaintiff avoided to appear before the Court and in the latter part, the trial Court has rejected the Application

for restoration on the ground that the orders of the trial Court were not complied with. It means that the suit was dismissed for want of prosecution. Hence, it is dismissal under Order 9 Rule 8 of the Code of Civil Procedure wherein the Application made under Order 9 Rule 9 of Code of Civil Procedure was dismissed for the reasons mentioned by the trial Court. The order passed under Order 9 Rule 9 of CPC can be challenged under Order 43 Rule 1(c), hence maintainable. The Application praying for restoration of the suit was filed immediately on the same day. The Court should have restored the suit. Appeal from Order on the point of restoration of suit is allowed with the following order:

“The Suit is hereby restored to the original file along with the orders passed therein on the condition of payment of cost of Rs.10,000/- to the respondent.”

6. Civil Application is also accordingly disposed of.

(MRIDULA BHATKAR, J.)