

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**APPEAL FROM ORDER NO. 334 OF 2014
WITH
CIVIL APPLICATION NO. 382 OF 2014**

Ali Jarrar Siddiqui	... Appellant/Applicant
Vs.	
M/s. Hindustan Unilever Ltd.	... Respondent

Mr. A.M. Saraogi, Advocate for the appellant/applicant.

CORAM: MRS.MRIDULA BHATKAR, J.
DATE: 15th January, 2018.

P.C.:

This Appeal from Order is directed against the order dated 21st December, 2013 passed by the learned Judge of the City Civil Court, Greater Mumbai in S.C. Suit No. 3844 of 2011 thereby dismissing the Notice of Motion No. 2356 of 2013.

2. The learned counsel for the appellant submitted that the appellant has filed the suit for money recovery, however, the suit was dismissed for want of prosecution on 30th April, 2013. Thereafter, the appellant took out Notice of Motion after 2½ to 3 months for restoration of the said suit. At that time, the respondent was served and the respondent opposed the Application. The learned counsel submitted that the Notice of Motion was heard and the learned Judge

dismissed the Motion. In the result, the suit is dismissed. The learned counsel submitted that NCLT was established and resumed on 1st June, 2016 and due to bankruptcy of the company, the Presiding officer is appointed and therefore, it is necessary for the appellant/plaintiff to file the claim before National Company Law Tribunal (NCLT). However, he submitted that due to dismissal of the suit and pendency of this Appeal from Order, the appellant cannot file his claim before NCLT. He submitted that the suit is to be restored and then only the appellant can withdraw the same after seeking liberty to move to NCLT.

3. Perused the order of the trial Court. The trial Court had held the counsel responsible for dismissal of the suit. However, today the Appeal from Order is pending challenging the said order. The money recovery suit filed by the appellant was dismissed. For the mistake of the clerk or advocate, a party should not suffer and therefore, I am setting aside the order of the trial Court dated 21st December, 2013 and the said Notice of Motion No. 2356 of 2013 praying for restoration of Suit is hereby allowed. The suit is hereby restored to the original file before the Charity Commissioner's Court. It is to be noted that the respondent is no more a defendant due to bankruptcy

and the Presiding Officer is appointed and thus, necessary steps for amendment may be taken by the appellant/plaintiff.

4. With this, Appeal from Order is allowed.
5. Civil Application is accordingly disposed of.

(MRIDULA BHATKAR, J.)