

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4146 OF 2017

Nanakchand H. Bansal	..	Petitioner
vs.		
Municipal Corporation of Greater Bombay	..	Respondent

Ms Aparna Sonawane for the Petitioner.
Mr. Pradeep Patil for Respondent-BMC.

CORAM : M. S. SONAK, J.
DATE: 27 MARCH 2018.

P.C :

- 1] Heard learned counsel for the parties.
- 3] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.
- 4] On 11th August 2017, this court made the following order:
 - “1. Mentioned for urgent reliefs. Mr. Gupta, learned counsel for the Petitioner seeks leave to amend the petition so as to also challenge the order dated 2nd July, 2014. The amendment to be carried out forthwith in the prayer clause. Re-verification is dispensed with.
 2. This petition challenges the order dated 17th March, 2017 passed by the Civil Civil Court at Bombay. The impugned order dismissed the notice of motion taken out by the Petitioner seeking restoration of the Notice of Motion No. 725 of 2011 which was dismissed on 2nd July, 2014. The impugned order did not accept the statement of the Petitioner on affidavit that on 2nd July, 2017 that the advocate who was appears for the Plaintiff was unwell and colleague advocate appeared and prayed for short time.
 3. Prima facie the aforesaid ground of the advocate being unwell was sufficient to recall an order which was passed ex-parte without hearing the advocate for the parties. I am

inclined to allow the petition at this stage by setting aside the two orders dated 17th March, 2017 and 2nd July, 2014 and restoring the Notice of Motion No. 1924 of 2014 for final disposal by the trial court. However, the learned counsel for the respondents objects to any such order, as according to him the impugned orders are unimpeachable and call for no interference. The counsel states that he would be able to sustain the impugned orders at the hearing of the petition.

4. *Therefore, there shall be ad-interim stay of the impugned order dated 17th March, 2017 passed in Notice of Motion No.1924 of 2014 as also ad-interim stay of the order dated 2nd July, 2014 passed in Notice of Motion No.725 of 2011. Petition to come up on Board on the next CMIS date i.e. 3rd October, 2017 to which the petitions is posted for admission. Mr.Pradeep Patil, learned counsel for the Corporation waives notice.*

5. *However, it is made clear that this order will not prohibit the City Civil Court from proceeding with the further hearing of the suit. The Petitioner undertakes to co-operate in the early disposal of the suit. The hearing of the suit is expedited."*

5] Today, Mr. Pradeep Patil, learned counsel for the respondent-BMC, submits that the petitioner was unnecessarily delaying the proceedings before the City Civil Court. He submits that despite several opportunities the petitioner was not proceeding with the matter and therefore, the City Civil Court was quite justified in making the impugned orders dated 17th March 2017 & 2nd July 2014. In such circumstances, he submits that this petition may be dismissed.

6] Upon due consideration of the submissions of Mr.Patil, it is necessary to note that on the crucial date, the reasons stated before the trial court was that the advocate for the petitioner was unwell and therefore, unable to attend the proceedings before it.

There is no contest insofar as this fact is concerned. Although there is merit in the contention of Mr. Patil that the petitioner ought to have more diligent in this matter, the impugned orders, visit the petitioner with consequences which are quite disproportionate to the so called lapse on their part on the crucial date. In such circumstances, some costs can be awarded in favour of the respondent as a condition for setting aside the impugned orders. Accordingly, the impugned orders dated 17th March 2017 and 2nd July 2014 are set aside subject to the petitioner depositing before the trial court costs of Rs.7,500/- (Rupees Seven Thousand Five Hundred only) within a period of four weeks from today.

7] Parties to appear before the City Civil Court on 16th April 2018 at 10.30 a.m. and produce the authenticated copy of this order.

8] Rule is made absolute in the aforesaid terms.

9] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)