

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.192 OF 2018
ALONG WITH
CIVIL APPLICATION NO.250 OF 2018

Pawan Verma	 Appellant-Applicant
V/s.	
Kamlesh K. Panchal and Anr.	 Respondents

Mr. Jitendrakumar G. Damani, a/w. Mr. Dharmendra J. Damani, for the Appellant-Applicant.

Mr. S. Shamim, I/by M/s. Shamim & Co., for Respondent No.1.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 21ST AUGUST, 2018.

P.C. :

1. Heard Mr. Damani, learned counsel for the Appellant-Applicant, and Mr. Shamim, learned counsel for Respondent No.1.
2. Admit.
3. With the consent and on the request of learned counsel for both the parties, the Appeal is taken up for final disposal at this stage itself.
4. The challenge in this Appeal is to the order dated 13th February

2018, by which the City Civil Court at Dindoshi, Mumbai, has dismissed the Notice of Motion No.2786 of 2017 taken out in Summary Suit No.1385 of 2018. The said Notice of Motion was taken out by the present Appellant, who is Defendant No.1, to condone the delay in taking out the said Notice of Motion; to allow him to comply with the order dated 11th November 2016; and to permit him to file Vakalatnama on record. The Trial Court has rejected the said Notice of Motion, considering the facts which were brought before it, on the count that, there was delay of 5 years in appearing in the matter.

5. However, considering that the matter should not be decided on technical grounds, but should be decided on merits, in the interest of justice, this Court thought it fit that, instead of going into the technicalities, the Trial Court should decide the Suit itself on merits. Otherwise, once the matter is admitted and kept pending with the order of stay, the Summary Suit, which is pending before the Trial Court, will also be dragged for years together.

6. Hence, in the substantive cause of justice, the Appeal is allowed. The impugned order passed by the Trial Court, rejecting the Notice of Motion, is set aside, subject to the Appellant paying the costs of Rs.15,000/- to Respondent No.1 within a period of two weeks from today. On failure of the Appellant to pay the costs within the stipulated time,

this order will stand automatically vacated. The costs to be paid directly to Respondent No.1 or be deposited in the Trial Court. If the costs are deposited in the Trial Court, Respondent No.1-Plaintiff is allowed to withdraw the same.

7. In view of the above, Civil Application No.250 of 2018 pending in the Appeal does not survive and the same is disposed off as infructuous.

[DR. SHALINI PHANSALKAR-JOSHI, J.]