

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

APPEAL FROM ORDER st. NO.10048 OF 2017

Rajinder Singh Sahi

... Appellant

Vs.

General Manager
Amarship Management Ltd.

... Respondent

Mr.Abdul Karim Naziruddin Mulla for the Appellant

Ms.Khooshnum R. Daviervalva with Ms.Ria Panchal i/b M/s.Mulla &
Mulla & CBC, for Respondent

CORAM: Mrs.MRIDULA BHATKAR, J.

DATED: FEBRUARY 21, 2018

P.C. :

1. This appeal is directed against the order dated 10.4.2015 thereby dismissing the Suit No.8450 of 1998 (High Court Suit No.4694 of 1998) for want of prosecution.

2. The learned Counsel for the appellant submits that the appellant has suffered injustice and is shaken by the order passed by the trial Court when his matter was referred to mediation and when the mediation was in progress, the record was mysteriously called and the order of dismissal of the suit was passed. He

further submits that because of this order, the respondent has made contradictory and false statements in its affidavit in reply filed in this matter. It is false that the respondents did not attend mediation on any date.

3. The learned Counsel for the respondent denies all the allegations and submits that the affidavit and the application filed by the appellant is contradictory.

4. In order to verify whether the order of dismissal was passed when the matter was referred to mediation, I had called a report from the Principal District Judge of the Bombay City Civil Court. The learned Principal District Judge has sent the report dated 6.2.2018. The report discloses as follows:

“It appears from the report of Sheristedar of C.R. No.52 that HHJ Shri N.K. More was presiding over C.R. No.8 when Suit No.8450/1998 was referred. Thereafter HHJ Shri N.K. More took charge in C.R. No.52 on 22.2.2015 and retired on superannuation on 28.2.2017. During the said period Shri N.K. More was also attending Mediation Cases on working Saturdays in Chamber of C.R. No.52 but roznama was not being maintained. It appears from the Mediation Papers that vide Referral Order dated 23.12.2014 and Roznama dated 23.12.2014, HHJ Shri P.K. Chitnis referred the matter for Mediation. Thereafter the Mediation Co.Ordinator, vide Letter No.1414/2014 dated 29.12.2014 sent the matter to HHJ Shri N.K. More, then presiding over C.r. No.8 and the first date was fixed on 17.1.2015. Thereafter HHJ Shri N.K. More was

transferred to C.R. no.52 on 22.2.2015 and submitted the Mediation Report on 5.12.2015. It is submitted by the concerned Sheristadar that except the Mediation papers, Annexure-1 hereto, no record was found in C.R. No.52. Similarly, the Stenographer Mrs.P.S.Naik has stated in her report, Annexure-2, that HHJ Shri N.K. More had never given noting of Mediation matter, therefore, she does not have noting of Mediation during the said period.”

5. Thus, it shows that the record of this mediation is not available to ascertain whether the respondents have appeared and attended the mediation proceedings. In view of this, the truthfulness of the statements made about attending of the mediation by the respondents cannot be ascertained. However, the fact that the matter was referred to mediation in December, 2014 and the mediation report was sent on 5.12.2015 is specifically stated in the matter. Thus, if the matter was referred to mediation and was pending, then, the learned Judge ought not to have dismissed the matter for default. Hence, the said order needs to be set aside.

6. The impugned order dated 10.4.2015 is accordingly set aside. The Suit No.8450 of 1998 (High Court Suit No.4694 of 1998) is restored to the file, as it was, before the trial Court. The parties to appear before the trial Court on 19.3.2018.

7. Appeal is disposed of accordingly.

(MRIDULA BHATKAR, J.)