

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10119/2016

Suresh Cheddha

... Petitioner

V/s.

Chekavars Auto Care & Anr.

... Respondents

Mr. Sandeep Kumbhar I/b H. H. Nagi and Associates for the
Petitioner

CORAM: K.K. TATED, J.

DATED : NOVEMBER 30, 2018

P.C. :

1 Heard. By this Writ Petition under Article 227 of the Constitution of India, the Petitioner seeks to challenge the order dated 10.10.2014 passed by the Bombay City Civil Court Mumbai in Notice of Motion No.1277/2014 in Suit No.4442/2009 by which the Trial Court had permitted Respondent Defendant NO.1 to challenge the Plaintiff's claim and contentions on legal ground, without filing written statement.

2 The learned counsel for the Petitioner submits that the said suit came to be dismissed for default in October 2016. He submits that they have filed Notice of Motion for restoration of the said suit, which is pending for hearing.

3 Considering the fact that as on today, the suit is not alive, nothing survives in the Writ Petition. Hence, the Writ Petition can

be dismissed with liberty to the Petitioner to take out appropriate proceedings for the same cause of action if the said suit is restored by the Trial Court.

4 Hence, following order is passed.

- a. The Writ Petition stands dismissed as infructuous.
- b. Liberty granted to the Petitioner to take out appropriate proceedings for the same cause of action if the suit No.4442/2009 is restored.
- c. No order as to costs.

(K. K. TATED, J.)