

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

APPEAL FROM ORDER NO. 1120 OF 2015

Sunil Dhutia

.....Appellant

v/s.

Immediate Courier Express L.L.C.

.....Respondent

Mr. Haresh H. Mansukhani for the appellant.

Mr. Ankit Kothari a/w. Mr. Amit Khairwar I/b. D.H. Law
Associates for the respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 13th MARCH, 2018.**

P.C. :-

. The appellant herein has challenged the order dated 13th July, 2015 whereby the learned Judge, Court Room No.24, City Civil Court, Mumbai has dismissed the Chamber Summons No.2095 of 2011 for non prosecution.

2. Heard Mr. H.H. Mansukhani, learned counsel for the appellant and Mr. Ankit Kothari, learned counsel for the respondent. I have perused the records. It is seen that the respondent herein had filed the Summary Suit No.2160 of 2010 for recovery of money. The

appellant had not appeared in the said suit and ex-parte decree came to be passed on 28th June, 2011. The respondent had filed Execution Proceedings No.1211 of 2011, in which warrant of attachment was issued. The appellant, thereafter, filed Chamber Summons for setting aside an ex-parte decree.

3. The impugned order indicates that the appellant herein had sought time. The learned Judge declined to grant time and dismissed the chamber summons by observing that the matter was adjourned from time to time at the instance of the appellant and the respondent. The appellant herein had sought further time even though he was put to notice that no further adjournment will be granted and had sought adjournment on the ground that her senior counsel was not able to appear before the Court.

4. It is seen that the learned Judge had not dismissed the chamber summons on merits of the matter but has dismissed it mainly on the ground that the appellant was trying to protract the matter. In the interest of justice, an opportunity needs to be given to the appellant

to pursue the chamber summons on merits. Hence, the appeal from order is allowed subject to cost of Rs.20,000/- (Rupees Twenty Thousand) to be paid to the respondent. Chamber Summons No.2095 of 2011 is restored to the file of City Civil Court, Mumbai. Both parties are directed to appear before the City Civil Court, Mumbai on 05th April, 2018 at 11:00 a.m. It is made clear that the parties shall not ask for further adjournment and the learned Judge shall dispose of the chamber summons as expeditiously as possible and in any event within a period of three months from the date of this order.

(SMT. ANUJA PRABHUDESSAI, J.)