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

**APPEAL FROM ORDER (ST) NO.24293 OF 2018
WITH
CIVIL APPLICATION (ST) NO.24294 OF 2018**

Rahimtulla Chhotelal ... Appellant.
V/s.

Municipal Corporation of Greater
Mumbai and ors ... Respondents

Mr. J. S. Yadav, i/by Bholaprasad S. Shukla, for the
appellant.

Mr. Prashant Sutar, for respondent corporation.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 12th SEPTEMBER, 2018.

P.C. :

1] Heard learned counsel for appellant and respondent.

2] This appeal is preferred against the order dated 13.7.2015,
passed by City Civil Court, thereby dismissing the Notice of Motion
No.595 of 2017 in L.C. Suit No.5398 of 1996.

3] The said Notice of Motion was taken out by the appellant
for restoration of the suit which came to be dismissed in default on
23.12.2016.

4] The perusal of the order passed by the trial Court, goes to
show that earlier also the suit was dismissed on 28.4.2008. It was
restored on the application filed by appellant and thereafter also the

appellant did not remain careful in prosecuting the said suit. Despite, opportunity is granted to the appellant, he had not filed affidavit of evidence for examination in chief. In view thereof, as sufficient opportunity was granted to the appellant, the trial Court was constrained to dismiss the suit for default.

5] Considering that the suit was filed in the year 1996, challenging the notice dated 10th May, 1996 issued by respondent corporation, at that stage, apparently also the suit has become infructuous and therefore, there is no reason to restore the suit. Hence, Appeal stands dismissed.

6] In view of dismissal of Appeal, Civil Application therein no more survives and the same is disposed off accordingly.

[DR.SHALINI PHANSALKAR-JOSHI, J.]