

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.546 OF 2015

Mohammed Salim Khan & Ors.	..	Appellants
Versus		
The Chief Executive Officer SRA & Anr.	..	Respondents
and		
Smt. Parvinbegum Mohammed Salim Khan	..	Orig.Plaintiff (deceased)

Mr. Sushil Upadhyay I/b. R.R.Varma for appellants

Ms. Gargi Bhagwat I/b. Divekar Bhagwat & Co. for respondent No.2.

Yogeshwar
Bhalchandra
Gokhale

Digitally signed by
Yogeshwar
Bhalchandra
Gokhale
Date: 2018.09.18
20:20:22 +0400

CORAM : DR.SHALINI PHANSALKARJOSHI, J.

DATE : 17th September 2018.

P.C.

Heard learned Counsel for appellant. This appeal is preferred against the order passed on 11th September 2014 by City Civil Court, Dindoshi thereby dismissing the Notice of Motion No.775 of 2014 filed in S.C.Suit No.1285 of 2008.

2] The said notice of motion was taken out by the present appellant for restoration of the suit on the count that she was not aware about the dismissal of the suit, which happened on 28th

February 2014. There was also delay of about 740 days in filing this application for restoration of the suit. The trial court has considered the fact that the appellant No.1 who has filed this application was husband of deceased plaintiff and, therefore, it becomes difficult to accept that the appellant was not aware about the death of his wife or about dismissal of the suit. No sufficient cause was given for explaining the delay of more than two years in preferring such application. The trial court has also considered that, otherwise also the suit was not maintainable in view of section 42 of Maharashtra Slum Clearance Act. No interim relief was also granted during pendency of the motion from 2008.

3] Whatever it may be and apart from that in the absence of sufficient cause shown for condonation of delay of more than two years, the trial court has rightly found it fit to dismiss the said notice of motion. In appeal, no interference is, therefore, warranted in a well reasoned order. The appeal is, therefore, dismissed.

(Dr. Shalini Phansalkar-Joshi, J.)