

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

**APPEAL FROM ORDER (ST.) NO. 31084 OF 2017
WITH
CIVIL APPLICATION (ST.) NO. 31086 OF 2017
IN
APPEAL FROM ORDER (ST.) NO. 31084 OF 2017**

Kopran Limited	Appellant
v/s.	
Bajaj Organic Pvt. Ltd.	Respondent

Mr. Naresh Rathnani i/b. Ashwin Ankhad & Associates
for the appellant.

Mr. S.A. Bhagwat i/b. H.H.M. Nagi & Associates for the respondent.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 16th MARCH, 2018.**

P.C. :-

1. The appellant/defendant herein has challenged the order dated 26th September, 2017 whereby the learned Judge, City Civil Court, Mumbai has dismissed the Notice of Motion No.55 of 2015 in Summary Suit No. 6418 of 2006.

2. The respondent/plaintiff had filed a Summary Suit No.1493 of

2006 for recovery of Rs.58,80,583/-. The respondent had taken out a summons for judgment which was dismissed by this Court and unconditional leave to defend the suit and file the written statement was granted on 10th April, 2007. It appears that the appellant had filed the written statement before this court on 25th April, 2008. There were office objections and by order dated 21st April, 2009, the Prothonotary and Senior Master, High Court Bombay had directed the appellants/defendants to remove the office objections on the counter claim and get the same numbered and registered on or before 05th May, 2009 failing which the counter claim was to be rejected under Rule 986 of the Bombay High Court Rules (Original Side), 1980. Failure to remove the office objections resulted in dismissal of the counter claim. Subsequently, the suit was transferred to the City Civil Court, Mumbai. The appellant filed a Notice of Motion No.55 of 2015 for setting aside order dated 21st April, 2009 passed by the Prothonotary and Senior Master and to take on record his written statement and counter claim. The learned Judge of the City Civil Court dismissed the said motion by the impugned order dated 26th September, 2017. Hence, this appeal.

3. Heard Mr. Naresh Rathnani, learned counsel for the appellant. He submits that non removal of office objections was mainly due to the negligence of the earlier advocate whereas Mr. S.A. Bhagwat, learned counsel for the respondent vehemently contends that the negligence of the appellant had resulted in the dismissal of the counter claim. With consent, appeal is taken up for final disposal at the stage of admission.

4. The case of the appellant as spelt out in paragraph 8 of the appeal memo as well as in the affidavit -in-support of the notice of motion is that they were not aware of the office objections. The advocate who was representing them had not informed them about the said objections and had also not taken any steps to remove the office objections. In my considered view, the parties should not suffer due to the mistake of the advocate.

5. Mr. N.H. Rathnani, learned counsel for the appellant submits that he will remove office objections within a period of two weeks. Statement is accepted.

6. In the light of the above statement and also in view of the averments made in the affidavit-in-support of notice of motion, which in my considered view, constitute sufficient ground, the appeal is allowed. The order dated 21st April, 2009 passed by Prothonotary and Senior Master, High Court Bombay as well as the order dated 26th September, 2017 in Notice of Motion No.55 of 2015 in Summary Suit No.6418 of 2006 is set aside subject to the costs of Rs.20,000/- to be paid to the Respondents. The appellant to remove all office objections within a period of two weeks from the date of uploading of this order.

7. Civil Application (St.) No. 31086 of 2017 stands disposed of in view of disposal of the appeal.

(SMT. ANUJA PRABHUDESSAI, J.)