

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
NOTICE OF MOTION NO. 1829 OF 2016
IN
APPEAL (L) NO. 427 OF 2012

Paresh C. Parekh ... Applicant/Org.Appellant
V/s.
Kamlesh C. Parekh ... Respondents/Org. Defendants

Mr. Vijay Prakash Yadav for the Applicant.
Mr. Rashmin Khandekar and Ms Jinal Gogri I/b Negandhi Shah and
Himayatullah for the Respondent.

CORAM : A.S. OKA AND M.S. SONAK, JJ.
DATE : 2nd NOVEMBER 2018.

P.C.:

- 1] Heard the learned counsel appearing for the applicant and the learned counsel appearing for the respondent.
- 2] The applicant is the original plaintiff and the respondents are the original defendants. The applicant filed the present appeal being aggrieved by the order dated 3rd April 2012 passed by the learned Single Judge in Notice of Motion taken out by the applicant in Suit No. 2154 of 2006 filed in this Court. When the appeal came up before the Division Bench of this Court on 6th May 2013, it was pointed out that Suit No. 2154 of 2006 was in the meanwhile transferred to the City Civil Court and the said Suit was dismissed in default. By order dated 6th May 2013, the Division Bench disposed of the Appeal on the ground that in view of dismissal of suit, the same will not survive. Liberty was granted to the

applicant to take steps for restoration of the appeal in the event the suit is restored.

3] On 11th April 2014, the suit was restored by the learned Judge of the City Civil Court. The present Notice of Motion is filed seeking restoration of Appeal. The learned counsel appearing for the applicant submitted that by the order dated 25th September 2017 passed by the learned Single Judge, the said suit has been transferred to this Court. He would therefore submit that the appeal deserves to be restored.

4] The learned counsel appearing for the respondents pointed out that the suit was restored on 11th April 2014 and the present Notice of Motion is taken out on 20th July 2016. He, therefore, submitted that in view of delay, Notice of Motion should not be entertained.

5] The appeal preferred by the applicant was disposed of not on merits, but on the ground that the suit filed by him after its transfer to the City Civil Court was dismissed in default. The appeal was disposed of only on this ground while reserving liberty to the applicant to apply for restoration of the appeal. It is true that there is a delay in making application for restoration. However, we may note here that the appeal was disposed of not on merits, but on the ground that the suit was dismissed in default.

6] The suit is restored and therefore, the applicant has right to prosecute the appeal. Delay in filing Notice of Motion, in the facts and circumstances of the case, is not a ground to deny restoration of the

appeal. Accordingly, Notice of Motion is made absolute by directing that Appeal (L) No. 427 of 2012 stands restored to the file of this Court. All Notices of Motion which were pending on 6th May 2013 are also restored.

7] Place the restored appeal under the caption of “fresh admission” on 5th December 2018.

(M. S. SONAK, J.)

(A.S.OKA, J.)