

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

**FIRST APPEAL NO. 776 OF 2014
WITH
CIVIL APPLICATION NO. 278 OF 2019**

Nelufer B. Irani ... Appellant

V/s.

Kishanlal Udaylal Jain & ors. ... Respondents

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Mr.Pradeep J. Thorat a/w. Ms.Aditi Naikare, for Appellant in First Appeal No. 776 of 2014.

Mr.Roop Manohar Vasudeo, for Respondent Nos.3 to 5 and for Applicant in Civil Application No. 278 of 2019.

Mr.Shankar P. Thorat, for Respondent Nos. 1 and 2.

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CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : 13th SEPTEMBER, 2019.

P.C.

1. With consent, the appeal is heard finally at the stage of admission.

2. The appellant- plaintiff in S.C.Suit No.2077 of 2009 has challenged the order dated 01/07/2014 whereby the Trial Court dismissed his application for extension of time to pay the cost and consequently dismissed the suit for non compliance of order dated 23/04/2014 passed in Notice of Motion No. 3530 of 2013.

3. The brief facts necessary to decide the appeal are as under :

4. The suit filed by the plaintiff-appellant was dismissed for non prosecution. By order dated 23/04/2014, the Notice of Motion was allowed and the suit was restored subject to payment of cost of Rs.5,000/-. The cost were to be paid within a period of one week and the same were to be credited with the Legal Aid Committee.

5. The plaintiff-appellant did not deposit the cost within the time and filed an application for extension of time to pay the cost.

The said application was opposed by the respondent Nos. 3 to 5. The Trial Court has dismissed the application for extension of time mainly on the ground that the plaintiff-appellant had filed an application for extension of time to deposit the cost instead of filing an application to deposit the cost. The Trial Court therefore assumed that the plaintiff-appellant was not ready and willing to lead evidence and proceed with the trial. Hence, rejected the application for extension of time.

6. Being aggrieved by this order, the plaintiff-appellant has preferred this appeal. By order dated 17/07/2014 this Court had granted leave to the plaintiff-appellant to deposit cost of Rs.5,000/- in the account of Legal Aid Committee within a period of one week from the date of the order. The Learned Counsel for the plaintiff states that pursuant to the said order the plaintiff-appellant has deposited the cost of Rs.5,000/- in the account of Legal Aid Committee.

7. The primary function of the Court is to adjudicate to dispute and to advance substantiated justice. In the instant case, there was no deliberate inaction on the part of the appellant in filing the application for extension of time. The application did not lack bonafides. Under the circumstances, the Trial Court ought not to have taken a pedantic and hypertechnical approach, which does not subserve end of justice.

8. Under the circumstances, the impugned order cannot be sustained. Consequently, the appeal is allowed. The impugned Judgment is set aside. The S.C. Suit No. 2077 of 2009 is restored to file. The parties are directed to appear before the Trial Court on 25th September, 2019 at 11:00 a.m.

9. The Civil Application stands disposed of in view of the disposal of the appeal.

(ANUJA PRABHUDESSAI, J.)