

Pradnya Bhogale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.105 OF 2015

1. Kirtimukar Rasiklal Ajmera
2. Bachubhai alias Jayesh Rasiklal Ajmera
3. Vijay Rasiklal Ajmera,
carrying on business at 76, Kika Street,
Gulal Wadi, Bombay 400 004. ..Appellants

Versus

1. M/s. Venus Developers,
a firm carrying on business as Builders &
Developers at Vireshwar Chambers,
Second Floor, 19/21, Ghoga Street,
Fort, Bombay 400 001.
2. Bhupat Jayantilal Ajmera (since deceased)
2(a) Kalpana Bhupat Ajmera
2(b) Haresh Bhupat Ajmera
2(c) Rushabh Bhupat Ajmera
3. Suresh Jayantilal Ajmera
4. Dhanesh Suresh Ajmera
the Defendant Nos.2(a) to 2(c), 3 and 4
all carrying on business at 232,
Masjid Bunder Road, Bombay 400 003. ..Respondents

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Shri G.S. Godbole I/b. Shri Yatin R. Shah for the appellants.
Ms. Deepti Panda I/b. Narayanan and Narayanan for the
respondents.

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CORAM : M.S. KARNIK, J.
DATED : 22nd OCTOBER, 2019.

ORAL ORDER

. Admit. By consent of the parties heard finally.

2. The appellants are the original plaintiffs. The challenge in this Appeal is to an order dated 10.12.2014 passed by the Bombay City Civil Court rejecting the Notice of Motion filed by the appellants-original plaintiffs for setting aside the order dated 18.10.2014 dismissing the suit for want of prosecution.

3. The plaintiffs filed the suit for declaration that the agreement dated 25.02.1988 between the plaintiffs and the defendant No.1 is validly terminated and for consequential reliefs. The plaintiffs had taken out the Chamber Summons No.55 of 2014 for amendment of the plaint. This application for amendment was rejected by the Trial Court vide order dated 19.06.2014. The order dated 19.06.2014 rejecting the amendment is subject matter of challenge in Writ Petition

No.6714 of 2017 which is tagged along with this Appeal From Order. Thereafter, before the Trial Court the appellants-plaintiffs applied for adjourning the hearing of the suit on the ground that the Writ Petition against the order rejecting the amendment is pending in this Court. When the matter was listed before the Trial Court on 18.10.2014, again a request was made for adjourning the hearing of the suit. The Trial Court observed that there is no seriousness on the part of the plaintiffs to proceed with the matter on merits though it is a 23 years old suit. The Trial Court observed that the plaintiffs did not take any steps for filing affidavit of evidence and original documents and that every time adjournment was sought on the ground that a Writ Petition is pending in this Court. The Trial Court therefore dismissed the suit for want of prosecution on 18.10.2014 which order is impugned in this Appeal.

4. According to the appellants the copy of the order was made available only on 12.11.2014. Thereafter, the Notice of Motion for setting aside the order of dismissal of the suit dated 18.10.2014 was filed on 10.12.2014. The Trial Court

found that the plaintiffs have not shown any sufficient cause for filing the Notice of Motion after the period of limitation of 30 days.

5. Learned counsel for the appellants submits that the copy of the order was received by the plaintiffs only on 12.11.2014. In any case he would submit that there is delay of only a few days which can not be called to be so gross that the application called for a rejection. Learned counsel for the appellants would submit that in any case this was a fit case where delay could have been condoned by imposing reasonable costs.

6. Learned counsel for the respondents on the other hand vehemently opposed this Appeal. In the submission of learned counsel no separate application for condonation of delay is filed. According to her the cause shown can not said to be sufficient. She would further submit that except for stating that the copy of the order was made available on 12.11.2014, no explanation whatsoever can be found in the affidavit justifying

the condonation of delay. She would further invite my attention to the observations made by the Trial Court in the order dismissing the suit for non prosecution as well as the impugned order rejecting the application of setting aside the order passed by the Trial Court dismissing the suit for non prosecution. According to her, the Trial Court is justified in observing that the plaintiffs are not at all interested in proceeding with the suit. She argued that a number of adjournments were obtained by the plaintiffs on the ground that a Writ Petition is pending in this Court challenging the order passed by the Trial Court rejecting the amendment. She would further submit that the conduct on the part of the plaintiffs will disentitle them from seeking any relief in this Appeal From Order.

7. Heard learned counsel. I have gone through the impugned order passed by the Trial Court. The appellants have time and again sought adjournments before the Trial Court on the ground that a Writ Petition is pending in this Court against the order rejecting the application for amendment. The Trial Court was not left with any other option but to dismiss the suit

for non prosecution. The order dismissing the suit for non prosecution is passed on 18.10.2014. According to the appellants the copy of the order was made available on 12.11.2014 and the Notice of Motion for setting aside the order dismissing the suit for non prosecution was filed on 10.12.2014.

8. In the Writ Petition challenging the order rejecting the amendment there was no stay in operation. In this view of the matter the Trial Court observed that plaintiffs are not interested in prosecuting the suit. Along with this Appeal, I have also heard Writ Petition No.6714 of 2014.

9. The delay in filing the Notice of Motion cannot be said to be gross or inordinate. Considering that in respect of an order dismissing the suit for non prosecution passed on 18.10.2014, the copy of which was received on 12.11.2014 whereafter the Notice of Motion was taken only on 10.12.2014 for setting aside the order dismissing the suit for non prosecution, it can not be said that the delay is so gross to warrant a rejection. The appellants do not deserve to be non

suit for want of prosecution. I am inclined to set aside the impugned order and restore the suit. Considering the observations made by the Trial Court in the impugned order and also the order dismissing the suit for want of prosecution, this is a fit case for imposing exemplary cost on the appellants. Subject to payment of cost of Rs.1,25,000/- payable by the plaintiffs to the defendant Nos.2, 3 and 4, the Appeal is allowed. The cost to be deposited in the Trial Court within a period of four weeks from the date of uploading of the order. The defendant Nos.2, 3 and 4 are permitted to withdraw this amount. The suit stands restored.

10. It is however made clear that the plaintiffs will co-operate with the Trial Court in the expeditious disposal of the suit and will not seek unnecessary adjournments. Considering that the suit is of the year 1991, the Trial Court is requested to dispose of the suit as expeditiously as possible and in any event within a period of one year from the date of uploading of the order.

(M.S. KARNIK, J.)