

DDR

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

WRIT PETITION NO. 4134 OF 2019

D. Prabhu @ Desmond D'Costa Prabhu	..Petitioner
vs.	
Gateway Properties Private Limited & ors.	..Respondents

....

Mr. M.R. Govilkar for petitioner.
Mr. J.V. Parmar i/b. L.C. Tolat & Co. for respondent No.1.
Arsh Misra i/v. M.V. Kini for respondent No.2 – BPT.
Ms. Rohini Bhadarkar i/b. V.Y. Sanglikar for respondent No.3.

....

CORAM : M.S.KARNIK, J.

DATE : 19th SEPTEMBER, 2019

P.C. :

What is prayed in this Petition is for setting aside the order dated 16th November 2018 passed by the City Civil Court refusing to restore Notice of Motion No. 3150 of 2017 which was dismissed in default for want of prosecution.

2. Learned counsel for the petitioner states that the petitioner was not keeping well. He would further submit that the Advocate engaged from the Legal Aid Panel on petitioner's behalf could not remain present when the matter was called out.

After the Advocate concerned reached the Court, an application was made for restoring Notice of Motion No. 3150/2017. The same however was rejected by the impugned order.

3. The petitioner's prayer is opposed by learned counsel for respondent No.1 – original plaintiff. Learned counsel for respondent No.1 submits that the petitioner has no locus as he claims to be legal heir of defendant No.7. He further says that the petitioner is financially sound. By misguiding the Court an order for representation through Legal Aid Panel was requested and which was granted. It is made clear that it will be open for respondent No.1 to raise all these objections before the trial Court. Even learned counsel for respondent Nos. 1 to 3 opposed the Petition.

4. However, in my opinion, only by way of an indulgence for the reasons mentioned in the application and with a view to grant one opportunity to the petitioner to contest Notice of Motion No. 3150 of 2017, that the order dated 16/11/2018 is set aside.

5. It is made clear that the petitioner will co-operate with the trial Court and will not seek unnecessary adjournments when Notice of Motion No. 3150 of 2017 is heard afresh on merits. It is further made clear that I have not considered any of the issues on merits and all contentions are kept open.

6. The trial Court to decide Notice of Motion No. 3150 of 2017 on its own merits without being influenced by any observations made by me in this order.

7. The Petition is allowed subject to cost of Rs.5000/- to be paid to the plaintiff by the petitioner within a period of 2 weeks from today.

8. The Petition stands allowed in the above terms.

(M.S.KARNIK, J.)

Diksha
Rane
Digitally
signed by
Diksha
Rane
Date:
2019.09.23
19:21:40
+0530