

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

**APPEAL FROM ORDER NO. 556 OF 2015
WITH
CIVIL APPLICATION NO.697 OF 2015**

Emgee Homest Pvt. Ltd.

..Appellant

v/s.

Shri Sunilchandra Shridhar Sadalge
& Ors.

..Respondents

Mr. Ashish Gupta I/b. Lexim Associates for the Appellant
Ms. Deepali Bagla I/b. Alok Kumar M. Bagla for the Respondent
Nos.2 and 3.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : 05th MARCH, 2019.**

P.C.

1. The appellant herein has challenged the impugned Order dated 18th February, 2015 whereby the learned Judge, City Civil Court, Gr. Bombay has dismissed the Notice of Motion for restoration of Suit No. 7433 of 2005 which was dismissed for default by order dated 29th June, 2013.

2. Heard the learned Counsel for the appellant and the learned Counsel for the respondent. I have perused the records.

3. The appellant herein was plaintiff in S.C.Suit No. 7433 of 2005, which is initially filed before this Court. While the suit was pending before this Court, the appellant was represented by M/s. Thakore Jariwala and Associates, and later the suit was handled by Advocate Mr. Vinod Shah. Subsequent to the amendment to the City Civil Courts Act, the suit was transferred to the City Civil Court, Gr. Bombay. The appellant has stated that they were not aware that the suit was transferred to the City Civil Court and that they were not informed about the same by their Advocate. The City Civil Court had also not issued notice to the appellant. As a consequence thereof, the appellant did not appear before the City Civil Court and the suit came to be dismissed for non-prosecution.

4. The records indicate that neither the advocate representing the plaintiffs had informed it about the transfer nor had the City Civil Court issued any such notice. It was for this reason that the plaintiffs and/or its representatives could not appear before the City Civil Court.

5. Considering the above facts and statement, in my considered view, this would be a fit case to take liberal and justice oriented

approach. Inconvenience caused to the respondent can be compensated by awarding costs. In the circumstances, the appeal is allowed subject to payment of costs of Rs.10,000/-. The impugned order is set aside and the Suit No.7433 of 2005 is restored to the file. Both parties are directed to appear before the City Civil Court on 25th April, 2019 at 11.00 a.m.

6. In view of dismissal of the appeal from order, civil application does not survive and the same is disposed of.

(ANUJA PRABHUDESSAI, J.)