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

APPEAL FROM ORDER ST. NO.15263 OF 2019

CSIR-Central Salt & Marine Chemicals Research Institute

..Appellant

Vs

Pioneer Engineering Company

..Respondents

Mr. R.P. Anil Kumar a/w Amit Saple, P. Kumar and Roshni Vepari for Appellants.

Mr. Guru Shanmugam i/b M & M Legal Ventures for Respondent.

CORAM : A.S.GADKARI, J.

DATE : 11th December 2019.

P.C.:

1] By the present petition, the petitioners/original plaintiffs have impugned Order dated 7th July 2017 passed by the learned Judge, City Civil Court, Greater Mumbai in Notice of Motion No.4273 of 2013 in Suit No.6745 of 2006, dismissing the said motion with cost.

2] Heard learned counsel for the appellants and the learned counsel for the respondent. Perused the record annexed to the petition.

3] The record indicates that, the appellants have filed the said suit for recovery of amount from the respondent on the ground that, the machine supplied by the respondent to the appellants was defective. The said suit was dismissed for default by Order dated 19.10.2013 by the Trial Court. The appellants/plaintiff thereafter filed the aforesaid Notice of Motion, under Order 9 Order Rule 13 of the Code of Civil Procedure for setting aside the said Order dated 19.10.2013 passed by the Trial Court and restoration of suit.

Perusal of impugned Order would indicate that, at least on three earlier occasions, neither the authorised representative of the plaintiff nor their Advocate remained present before the Trial Court and therefore the Trial Court dismissed the said suit for default. It is to be noted here that, the appellant is a Government Undertaking and will not be benefited by being negligent in the matter.

4] Mr. K.P. Anil Kumar, the learned counsel for the appellants fairly conceded to the fact that, on earlier at least three occasions neither the Advocate nor the authorised representative of the plaintiff remained present before the Trial Court however for the reasons beyond their control and therefore the Trial Court dismissed the said suit. He submitted that, if the suit is restored to the file of the Trial Court, the appellants/original plaintiffs hereinafter will attend each and every date before the Trial Court either through their authorised representative or their Advocate without any excuse.

Learned counsel for the respondent fairly submitted that, appropriate Orders may be passed in the interest of justice.

5] In view of the above and in the interest of justice, this Court is inclined to set aside the Order dated 7th July 2017 and restore the suit to the file of the Trial Court subject to condition that, the appellants shall pay cost of Rs.10,000/- to the High Court Legal Aid Committee having their Account in the name of "High Court Legal Aid Fund" within a period of 4 weeks from today. Subject to payment of cost of Rs.10,000/-, the Order dated 7th July 2017 is set aside and the suit is restored to the file of the Trial Court. The appellants/original plaintiffs hereinafter shall attend each and every date

before the Trial Court either through their authorised representative or their Advocate without any excuse.

Appeal from Order is allowed in the aforesaid terms.

(A.S.GADKARI, J.)