

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.5 OF 2018

IN

CIVIL REVISION APPLICATION NO.28 OF 2015

Shahnawaz Khan Sarfaraz Khan	...	Applicant
Vs.		
Iqbal Patel (decd) through LRs Tajunnisa		
Iqbal Patel and others	...	Respondents

Mr. Nitin Gangal a/w. Ms Namita Mestry and Prabhavatsen Balan for Applicant.

Mr. Y. E. Mooman for Respondents.

CORAM : R. G. KETKAR, J.

DATE : JUNE 12, 2019

P.C. :

Heard Mr. Gangal, learned Counsel for the applicant and Mr.Mooman, learned Counsel for the respondents.

2. This is an application for recalling the order dated 07.07.2016 passed by this Court in C.R.A.No.28 of 2015. By that order, C.R.A. was dismissed in default. In the order dated 07.07.2016, it was recorded that matter was on Board on 21.06.2016 when the time was sought on the ground that parties are exploring the possibility of settlement. Assurance was given on behalf of the applicant that if before the next date of hearing, settlement is not arrived at, the applicant will proceed with the matter and no adjournment would be sought on any count whatsoever. In view thereof, matter was adjourned to 05.07.2016. It was made clear that by that date, if settlement is not arrived at, the Court will proceed with the matter on its own merits. When the matter was called out on 05.07.2016, Advocate for the applicant sought adjournment on the ground that she will proceed with the matter on 07.07.2016. In view thereof, matter was kept on 07.07.2016 under the caption 'for dismissal'.

As none appeared on that date, C.R.A. was dismissed in default.

3. Mr. Gangal has invited my attention to paragraph 4 of the application and submitted that because of heavy rain fall, trains were running very late and the matter could not be attended by the applicant's Advocate.

4. As against this, Mr. Mooman has invited my attention to the reply filed by the respondent and submitted that no sufficient cause is made out for restoration. In fact, though applicant was present in order to avoid this Court purposely and deliberately, got the C.R.A. dismissed. He, therefore, submitted that no case is made out for restoration.

5. Civil Revision Application along with Civil Application for restoration as also Civil Application for bringing legal representatives were heard on 12.02.2019. In paragraph 5 of that order, it was made clear that on the next date, the Court will proceed to decide the C.R.A. on merits and the parties will proceed to argue the C.R.A. on the premise that C.A.No.5 of 2018 for restoration and C.A.No.42 of 2019 for bringing legal representatives of the respondent are allowed.

6. In view thereof and for the reasons stated in paragraph 4 of the application, I am satisfied that applicant has made out a case for recalling the order dated 07.07.2016. Hence, Civil Application is allowed in terms of prayer clause (b) with no order as to costs. C.R.A.No.28 of 2015 is restored to its original position. Civil Application is disposed of accordingly.

7. List the C.R.A. for admission on 20.06.2019 in the Supplementary Board.

(R. G. KETKAR, J.)