

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.430/2018
IN
CIVIL APPLICATION NO.745/2017
IN
APPEAL FROM ORDER (ST) 8415/2015

Chhotelal Chunilal Yadav ... Applicant

V/s.

M/s. Ashirvad Nice Developers ... Respondent

Mr. V. R. Kasle I/b., Ram & Co. for the Applicant

Mr. Saulekha Shaikhi /b. Rakesh Agrawal for the Respondent

CORAM: K.K. TATED, J.

DATED : MARCH 13, 2019

P.C. :

1 Heard. By this Civil Application, the Applicant seeks to recall the order dated 26.06.2018 by which the Civil Application No.745/2017 stood dismissed for non prosecution.

2 The learned counsel for the Applicant submits that on that day the advocate who was in-charge of the matter was held up in another matter. He further submits that in the interest of justice, this Hon'ble Court be pleased to recall the said order and hear Civil Application No.745/2017 on merits. He further submits that they have good chance of success in the matter.

3 On the other hand, the learned counsel for the Respondent has vehemently opposed the Civil Application. She submits that the Applicant has not shown sufficient cause for non appearance

of the concerned advocate before the court on 26.06.2018. Hence, there is no substance in the Civil Application. Same be dismissed with costs.

4 Heard. Considering the submissions made by the learned counsel for the Applicant and the averments made in the Application and because of the mistake on the part of the advocate, the Applicant should not suffer, I am satisfied that the Applicant has made out a case for allowing the present Civil Application. At the same time, the Applicant has to pay cost of Rs.500/- to the Respondent or their advocate.

5 Hence, the following order:

a) Civil Application is allowed in terms of prayer clause (a) and (b) which read thus:

“a) That delay of 28 days in filing the present Civil Application may be condoned.

b) That the order dated 26.06.2018 passed by the Hon'ble High Court in Civil Application No.745/2017 may be recalled and the Civil Application No.745/2017 be restored and hear on merits.”

c) The Applicant shall pay cost of Rs.500/- to the Respondent or their advocate within two weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.

d) Civil Application stands disposed of accordingly.

(K. K. TATED, J.)