

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

APPEAL FROM ORDER NO. 959 OF 2016

Mr. Rakesh P. Chavan

.. Appellant
(Original Plaintiff)

Vs.

M/s. Daimler Chrysler India Pvt. Ltd.

.. Respondent
(Original Defendant)

Mr.Sachin S. Punde, Advocate for appellant.

Mr.Shailesh Shukla a/w. Mr.Siddhesh S. Pradhan I/b J. Sagar Associates for respondent.

CORAM : N.J. JAMADAR, J.

DATE : 11TH MARCH 2019

P.C.

1. This appeal is directed against an order dated 28th June 2016, passed by the 3rd Additional Judge, Small Causes Court and Civil Judge, Senior Division, Pune, whereby the application preferred by the applicant, appellant herein, for restoration of Special Civil Suit No.184 of 2005, which was dismissed in default of appearance on 30th October 2014, came to be rejected. The applicant had instituted Special Civil Suit No. 184 of 2005 for damages in respect of a vehicle purchased by the applicant from the respondent-defendant.

2. On 30th October 2014, when the suit was posted for hearing, none appeared for the applicant, and, therefore, the said suit was dismissed for want of appearance. The applicant preferred Civil Application No.1140 of 2014 and sought restoration of the said suit to the file of the Court. The applicant averred in the said application that on account of ill health, he was not able to appear before the Court when the said suit was posted for hearing, and, therefore, the order of dismissal be set aside and the suit be restored to file.

3. The respondent resisted the application by filing objection. The substance of the objection put forth by the respondent was that the applicant was negligent in prosecuting the suit and despite ample opportunities the applicant did not appear before the Court, and thus the said suit was dismissed. Hence, there was no sufficient cause for setting aside the said order of dismissal and restoring the said suit to file.

4. The learned Judge, after appraisal of the material on record, was persuaded to reject the application holding, *inter-alia*, that though the applicant had produced certificates/documents on record,

the applicant failed to prove those certificates and documents. Therefore, it cannot be said that the applicant has succeeded in establishing the sufficient cause for non-appearance. Since, the suit came to be dismissed after providing adequate opportunities to the applicant, there was no reason to recall the said order. Hence, being aggrieved, the applicant preferred this appeal.

5. Heard Shri Sachin Punde, the learned counsel for the appellant and Shri Shailesh Shukla, the learned counsel for the respondent.

6. The learned counsel for the appellant submitted that the trial Court committed a manifest error in rejecting the application on the ground that the applicant did not prove the medical certificates/documents tendered in support of the sufficiency of the reasons for non-appearance. It was further urged that the learned Judge lost sight of the fact that there was no denial on the part of the respondent about the genuineness and truthfulness of those medical certificates and documents. Even otherwise, the trial Court ought to have taken a view which would advance the cause of justice. Therefore, to provide an effective opportunity of hearing, the impugned order be set aside and the suit be restored to file.

7. In contrast to this, the learned counsel for the respondent urged that the approach of the learned trial Court was totally justifiable. Taking me through the order passed by the trial Court, it was strenuously submitted that the record would reveal that for a number of dates, when the matter was posted for hearing, the applicant was absent without any cause or intimation to the Court. Moreover, the medical certificates/documents placed on record, according to the learned counsel for the respondent, justify the inference drawn by the trial Court that the applicant was not suffering from such ailments which prevented him from appearing before the Court.

8. I have perused the material on record including the impugned order. It is evident that the applicant had not placed on record certain medical certificates/documents in support of his claim that, during the relevant period, he was unwell. The certificates indicate that the applicant was suffering from several ailments as well as was grappling with certain mental health issues. The impugned order would reveal that the applicant was appearing before the learned trial Court in-person.

9. The fact that the medical certificates/documents were of the same period during which the applicant had not appeared before the Trial Court, was not disputed. Nor the genuineness and correctness of the documents tendered by the applicant was questioned. The learned Judge could not have brushed aside those documents on the premise that the applicant did not prove the same by examining the doctors, who prepared those certificates/documents. It is more so for the reason that the genuineness of the documents was also not questioned by the respondent in its reply to the application for restoration.

10. The fact that the applicant was appearing in-person, ought to have received some consideration by the learned Judge. Some leverage, in the matters where a party appears in-person, is required to be given; not for the reason that a litigant appearing in-person stands on a different footing but for the reason that a party in-person is not thoroughly initiated into the Court proceedings and may not be aware of all the consequences which flow from his action or inaction.

11. Undoubtedly, the applicant had remained absent on a number

of dates. Yet, having regard the nature of the claim in the suit, and to advance the cause of justice, the impugned order is required to be set aside. Hence, the following order :

12. The appeal stands allowed.

13. The impugned order dated 28th June 2016 is quashed and set aside. Special Civil Suit No.184 of 2005 is restored to file of the learned 3rd Additional Judge, Small Causes Court and Civil Judge, Senior Division, Pune, subject to payment of costs of Rs.2,000/- by the applicant to the respondent within a period of three weeks from the date of uploading this order. The costs be deposited before the trial Court.

[N. J. JAMADAR, J.]