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

**APPEAL FROM ORDER NO. 754 OF 2015
WITH
CIVIL APPLICATION NO. 918 OF 2015
IN
APPEAL FROM ORDER NO. 754 OF 2015**

Surya Flexible Laminates Pvt.Ltd.	..Appellant
vs.	
Chetan Vijaykumar Ruparelia	..Respondent

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Shri C.P. Deogirikar for appellant.
Shri Rupesh Sohoni a/w. Bhakti Patwardhan I/b. M/s. Subhash
Pradhan & Co. for respondent.

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CORAM : M.S.KARNIK, J.

DATE : 25th JUNE, 2019

P.C. :

Heard learned Counsel for the appellant and learned
Counsel for the respondent.

2. This Appeal is filed challenging an order dated 12th
November, 2014 passed by the Judge, City Civil Court, Mumbai,
dismissing the Notice of Motion filed by the appellant - original

plaintiff for restoring the suit which was dismissed in default by the Judge, City Civil Court, Mumbai. The suit came to be dismissed by an order dated 16th September, 2014. The suit was dismissed for failure on the part of the plaintiff to proceed with the prosecution of the suit.

3. Learned Counsel for the appellant submits that the suit was at the stage of evidence. Learned Counsel for the appellant submits that the affidavit of evidence on behalf of plaintiff is filed. However, on the subsequent dates as his client was abroad, he could not attend further hearings. Therefore, he submits that there was some communication gap between the plaintiff and his lawyer which resulted in dismissal of the suit. He would submit that in the interest of justice he should be given one opportunity to contest the suit.

4. Learned trial Judge by a reasoned order dated 12/11/2014 has dismissed the Notice of Motion filed by the plaintiff for restoring the suit.

5. Learned Counsel for the respondent initially opposed the Appeal. He, however, in all fairness submits that if at all the suit is to be restored, the same should be done by imposing heavy cost.

6. In view of the fair stand of the respondent and for the reasons as mentioned in Memo of Appeal as well as Notice of Motion, in my opinion, one opportunity deserves to be granted to the appellant to contest the suit on merits in the interest of justice.

7. Learned Counsel for the appellant, on instructions of the appellant, undertakes that he would cooperate with the trial of the suit and will not seek unnecessary adjournments as the suit is of the year 1998.

8. In this view of the matter, the impugned order is set aside. The Suit No. 1801 of 1998 is restored to file.

9. The parties to appear before the trial Court on 29th July, 2019.

10. This Appeal is allowed subject to payment of cost of Rs.75,000/- which learned Counsel for the appellant submits that he would pay within a period of 4 weeks from today.

11. Out of the amount of Rs.75,000/- which is to be paid as cost, Rs.50,000/- be paid to the respondent. Learned Counsel for the respondent fairly submits that he has no objection if balance of Rs.25,000/- is paid to the National Association for the Blind India, Worli, Mumbai 400 030. The plaintiff to produce receipt of compliance of having paid the cost before the trial Court.

12. The Appeal is disposed of in the above terms.

13. In view of the disposal of the Appeal, nothing survives for consideration in the Civil Application. The Civil Application is also disposed of.

(M.S.KARNIK, J.)