

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.605 OF 2019
IN
NOTICE OF MOTION NO.327 OF 2017
IN
COMMERCIAL APPEAL (L) NO.288 OF 2016
IN
NOTICE OF MOTION NO.25 OF 2013
IN
COMMERCIAL IP SUIT NO.108 OF 2013

M/s. Nalli Chinnasami Chetty & Ors. ..Applicants

IN THE MATTER BETWEEN

M/s. Nalli Chinnasami Chetty & Ors. ..Appellants

Versus

Nalli Sambbasivm & Ors. ..Respondents

N. S. Nappinai a/w Noelle Ann Park, Nikita Mary Abraham i/by
Noelle Ann Park, Advocates for the Applicants.
Rashmin Khandekar a/w Rinku Gajaria, Amritha Vyas, Raina Gajria i/
by Gajria & Co., Advocates for the Respondents.

**CORAM : PRADEEP NANDRAJOG, C.J. &
SMT. BHARATI DANGRE, J.
DATE : 15th JANUARY, 2020**

P.C.

1] The Applicants had filed an Appeal against two orders dated 27.07.2016 and 02.08.2016. The same were passed by a learned Single Judge of this Court. The Appeal was filed on 09.08.2016. Listed before the Prothonotary and Senior Master with a lodging

number assigned to the Appeal on 29.09.2016. Learned Prothonotary and Senior Master granted time to remove the objections by 27.10.2016. The order had a peremptory direction to the effect that if the objections were not rectified by 27.10.2016 the Appeal would be deemed to have been rejected on account of objections not being removed.

2] Case status generated by accessing the website of this Court shows that the date 17.11.2016 was being shown on the website as the date when the Appeal at the stage of lodging was treated as having been dismissed for the objections not being removed.

3] The Applicants filed Notice of Motion No.327 of 2017 on 27.01.2017 seeking restoration of the Appeal in which on 02.08.2017, 23.08.2018, 28.08.2018 and 22.11.2018 orders were passed by the Court either adjourning the Notice of Motion on account of paucity of time or to be placed before the Roster Bench or on account of non-appearance on behalf of the advocate for the Applicants resulting in the Notice of Motion being listed on 29.11.2018 and dismissed in default on account of no appearance being made on behalf of the Applicants.

4] Applicants claim that the lawyer engaged was negligent and it was only on 19.03.2019 that the Applicants learnt that the lawyer was not diligently prosecuting the Notice of Motion No.327 of 2017. After collecting papers from the earlier lawyer the brief was assigned to a newly engaged lawyer and the instant Notice of Motion

No.605 of 2019 was filed seeking restoration of Notice of Motion No.327 of 2017.

5] Aforesaid dates on which events as above noted transpired not in dispute.

6] Whereas learned counsel for the Applicants urges that it is the case of negligence by the lawyer and cites judgments to the effect that negligence by a principal needs to be treated at different level of strictness vis-a-vis negligence by an agent : A lawyer being an agent of the client ; Counsel for the Respondents cites judgments which that if negligent reaches the level of being supine or showing total indifference when such negligence cannot be condoned even if the same is filed by agent.

7] Thus, we need to decide whether afore-noted facts show a negligence which has reached the level being supine negligence or indifference to the litigation being pursued.

8] The facts noted herein-above show as regards the client whatever steps were required to be taken were diligently taken. The negligence is by the counsel and if supine or indifference, the same would be attributable to the counsel and not the client. It needs to be highlighted that the client is stationed in Chennai. We also cannot lose sight that due to docket explosion in the Bombay High Court large number of matters are not listed in the cause list on the date reflected in the CMIS system.

9] Thus, we not only condone the delay in filing Notice of Motion No.605 of 2019 but also grant the relief prayed for but upon payment of cost in sum of ₹ 25,000/- to the Respondents.

10] We restore Notice of Motion No.327 of 2017.

11] The aforesaid facts would also necessitate granting the relief prayed for in the Notice of Motion No.327 of 2017 but upon payment of further cost of ₹ 15,000/-.

12] Notice of Motion No.327 of 2017 is also disposed of granting the prayer but subject to the cost imposed.

13] Costs in sum of ₹ 40,000/- shall be paid to the Respondents within four weeks. Upon payment of the costs and tendering proof thereof, Appeal (L) No.288 of 2016 as also Notice of Motion (L) No.2407 of 2016 shall stand restored. Objections to the Appeal would be removed within further six weeks and for which a peremptory direction once again is passed that if within said six weeks the objections are not removed the Appeal and the Notice of Motion which are on both at lodging numbers would be deemed to have been rejected.

SMT. BHARATI DANGRE, J

CHIEF JUSTICE

Balaji
G.
Panchal
Digitally
signed by
Balaji G.
Panchal
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