

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 2646 OF 2021

IN

CIVIL APPLICATION NO. 588 OF 2014

IN

FIRST APPEAL NO. 767 OF 2017

Dharamshir Trading and Marketing

Private Limited

... Applicant

In the matter between :

Dharamshir Trading and Marketing

Private Limited

... Appellant

Vs.

1. Motilal Manshi Shah

(Since deceased)

1A. Mrs. Hiraben Motilal Shah

& Ors.

... Respondents

.....

Mr. Dinesh Tiwari a/w. Adv. Ansh Karnawat i/b Dinesh Tiwari & Associates for applicant in IA.

Mr. Kamal Khata a/w. Mr. Yatin R. Shah and Mr. Shahzad Khajotia for respondent Nos.1A to 1F.

.....

CORAM : N.J. JAMADAR, J.

DATE : 4th October, 2021

PER COURT:

1. Heard the learned counsel for the applicant.
2. It seems that Civil Application No. 588 of 2014 came to be dismissed for non-appearance of the applicant.
3. The learned counsel for the applicant submits that the application came to be listed on 26th April 2019 for the first time after 12th July 2017, on which date, it was recorded that the possession with the applicant shall not be disturbed in the

meanwhile.

4. The learned counsel for the applicant has invited the attention of the Court to the order passed in Civil Application No. 589 of 2014, preferred by the co-defendant in First Appeal No. 186 of 2014, whereby the operation and implementation of the impugned judgment and decree has been stayed.

5. The learned counsel for the respondents submits that the applicant has ascribed no sufficient cause in the application for delay in taking out the application and non-appearance.

6. The Courts lien in favour of adjudication on merits rather than for default and non-appearance. Since the execution of the decree is stayed on an application filed by the co-defendant, it would be expedient, in the interest of justice, to hear the application for stay preferred by the applicant, on merits.

7. Thus, to advance the cause of justice, the application stands allowed in terms of prayer clauses (a) and (b).

8. The application stands disposed of.

9. Civil Application No. 588 of 2014 stands restored to file.

10. Civil Application No. 588 of 2014 be listed for hearing on 20th October 2021.

11. It is made clear that no request for adjournment, on any ground whatsoever, shall be entertained in Civil Application No. 588 of 2014.

12. All concerned to act on an authenticated copy of this order.

Shraddha Talekar, PS

(N.J. JAMADAR, J.)