

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**APPEAL FROM ORDER NO.179 OF 2016**  
**ALONG WITH**  
**CIVIL APPLICATION NO.244 OF 2016**

Chandrakant Premji Bhamaria ] ... Appellant

Vs.

Development Credit Bank Limited ] ... Respondent

...  
Ms. Kalpana R. Trivedi with Mr. Sreenath R. Trivedi for the  
appellant.

Ms. Jyoti Sanap i/b Mr. V. Deshpande for the respondent.

...

**CORAM : SMT. BHARATI DANGRE, J.**

**DATED : 17<sup>TH</sup> MARCH, 2022.**

**P.C. :-**

1. Heard the learned counsel for the appellant and the learned counsel for the respondent.
2. The appeal from order seeks to challenge the order dated

23/04/2015 passed on Notice of Motion No.980 of 2015 in Suit No.6483 of 2004, by which the restoration of the suit, which was dismissed for default on 13/02/2015 was refused.

3. The order dated 13/02/2015 reads as under:

*“Plff and Adv. absent.  
Adv. Ms. Priti Tare for Deft. no.4 present.  
On last two dates, matter was adjd for filing affidavit of evidence and it was adj till this date. Today also Plff and Adv. for Plff absent when called. Therefore, it seems that suit being old more than 10 years, Plff is not taking care to file the affidavit of evidence.*

**ORDER**

*Hence matter is dismissed in default for want of prosecution.”*

4. On its restoration being sought, the learned Judge referred to the facts set out in the notice of motion, being old-age and weakness of the plaintiff and the advocate having some personal difficulties and it was, in their absence, the suit being dismissed. Leniency was prayed on the ground that the plaintiff is a senior citizen. The defendants opposed the notice of motion by particularly stating that the suit came to be dismissed on 13/02/2015, but the date of order of dismissal of the suit was wrongly shown by the plaintiff in the notice of motion as 16/02/2015. It was also pleaded that the grounds set out were not satisfactory and no medical certificate is produced to support the weakness and ill-health of the plaintiff and the only ground pleaded for the absence of the advocate is his personal difficulty

on two consecutive dates. The aforesaid argument of the defendants persuaded the learned Judge to accept the submissions of the defendants. Learned Judge has, therefore, dismissed the notice of motion.

5. I have travelled beyond the impugned order and perused the order sheets, which the appellant himself has placed on record, which reflect the date of the proceedings, right from 19/06/2013 till 13/02/2015. Pertinent to note that on 19/06/2013, 15/11/2013, 17/04/2014, 15/11/2014, 12/12/2014 and on 19/01/2015, the plaintiff was absent. The court is, therefore, perfectly justified in recording that the plaintiff is not diligent in prosecuting the suit and the suit, which is more than 10 year-old deserves a speedy hearing. It is an accepted position of law that a party cannot be shown indulgence if he is not diligent in prosecuting the remedy available to him.

Here is a case, where the plaintiff has not appeared, nor his advocate remained present to prosecute the suit, which prompted the learned Judge to dismiss the suit for default. Finding no legal infirmity in the impugned order, the appeal is dismissed.

6. In view of the dismissal of the appeal, pending applications, if any, shall stand disposed off.

**[SMT. BHARATI DANGRE, J.]**