

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

APPEAL FROM ORDER NO. 37 OF 2020

Arun Kumar Mussaddy and anr. Appellants
v/s.
M/s. Ansal Housing and Construction
Limited and ors. Respondents

Mr. Kezer Kharawala i/b. Lex Juris for the Appellants.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 22nd JULY, 2022.

P. C. :-

. The Appellant herein has challenged the order dated 17/04/2015 wherein the learned Judge, City Civil Court, Greater Mumbai has dismissed the Notice of Motion No.2775/2014 for restoration of Suit No.5974/2007 (High Court Suit No.3021/2007) which was dismissed for default.

2. Heard learned counsel for the Appellant. Perused the records. The learned Judge has dismissed the Notice of Motion on the ground that the Appellant-plaintiff has failed to make out sufficient cause. Learned counsel for the Appellant states that he was personally representing the Appellant-plaintiff before the Trial Court. He submits that he had misplaced the papers as well as his diary in the course of

shifting of his office. He submits that it was in the aforesaid circumstances, he lost track of the file. He undertakes to file affidavit in this regard in the Registry within two days.

3. The records reveal that in the affidavit in support of Notice of Motion, the plaintiff has stated that he was not well from December, 2013 to May, 2014 and was unable to contact his advocate. He has further stated that he was informed by his advocate that he had forgotten to enter the matter in the diary and he has misplaced the diary in the course of shifting of the office premises. It was only after the advocate verified the records, they learnt that the suit was dismissed for default and they filed an Application after obtaining certified copy of the impugned order.

4. The Respondents who have been duly served have not contested the proceedings. In my considered view, the Appellant should not be penalized for inaction of his advocate particularly when the explanation does not smack of malafides. Moreover, the reasons stated in the affidavit-in-support of Notice of Motion, in my considered view, constitute sufficient ground. It is well settled that power to condone the delay has been conferred upon the Courts to do substantial justice

to the parties. Keeping this principal in mind, the learned Judge was required to adopt liberal and justice oriented approach in condoning the delay. Under the circumstances, the Appeal is allowed. The impugned order dated 17/04/2015 is set-aside. Consequently, the Notice of Motion is allowed and the suit is restored to file. Learned Judge, City Civil Court, Greater Mumbai is directed to proceed with the suit in accordance with law after notifying the next date to the defendants. Pending Applications, if any, stand disposed of in view of disposal of the Appeal.

**PREETI
H JAYANI**

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(SMT. ANUJA PRABHUDESSAI, J.)