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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL WRIT PETITION NO. 2500 OF 2022

THE ORIENAL INSURANCE COMPANY LTD.

....PETITIONER

V/s.

M/S CAFE ROYAL

....RESPONDENT

Mr. V. Y. Sanglikar Advocate for the Petitioner

Mr. Archit Jayakar a/w Divya Tyagi a/w Zeeshan Syed i/b Jayakar & Partners for Respondent

CORAM : NITIN W. SAMBRE, J.

DATE: APRIL 18, 2022.

P.C.:

1) Heard. I have perused the order impugned dated 17/01/2022 whereby Appeal of the Respondent preferred under Section 9 of the Public Premises (Eviction of Unauthorised Occupants Act), 1971 dismissed for want of prosecution, ordered to be restored subject to cost of Rs. 5000/- by the Appellate Court.

2) Mr. Sanglikar, learned counsel appearing for the Petitioner would urge that order impugned is perverse as the Court below has

failed to consider repeated defaults of the Respondent-Appellant in arguing the Appeal though it was scheduled for almost more than 40 times. According to him, cost imposed is unreasonable. He would invite attention of this Court to the Bombay provisions of Order XLI Rule 18-A of Code of Civil Procedure, 1908 so as to claim that order of dismissal of Appeal for want of prosecution was justified in the facts and circumstances of the case, particularly having regard to the conduct of the Respondent-Appellant. That being so, merely for asking the Appellate Court ought not to have granted restoration.

3) While countering the aforesaid, learned counsel Mr. Jayakar would urge that Respondent-Appellant is willing to argue the matter and shall continue his arguments on day to day basis, if so permitted by the Principal Judge before whom the Appeal is pending. He further assures that hearing of the Appeal shall be concluded expeditiously at his end without seeking further adjournments in the matter in view of condition of time bound disposal of the Appeal mentioned in the impugned order.

4) In view of aforesaid assurance and having regard to the fact that Court below while granting restoration has recorded satisfaction

that there exists sufficient reason for non appearance of the Respondent-Appellant, in my opinion, no interference is called for on merits. However, cost of Rs. 5000/- is enhanced to Rs. 20,000/- to be deposited within one week from today before the Appellate Court.

5) It shall be open for the Petitioner to move before Principal Judge in the matter of recovery of damages/compensation.

6) Petition stands disposed of in above terms.

[NITIN W. SAMBRE, J.]