

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

**CIVIL APPLICATION NO. 321 OF 2018
IN
WRIT PETITION NO. 7366 OF 2004**

Deepak Manaklall Katariya ... Applicant/Petitioner
Vs.
Hotel Evening Inn. Pvt. Ltd. & Ors. ... Respondents

Mr. Shriram S. Kulkarni for the Applicant/Petitioner.
Mr. A. A. Garg for Respondent no.2.

CORAM: ABHAY AHUJA J.

DATE : 22nd DECEMBER 2022

P.C. :

1. This is an application seeking restoration of writ petition no. 7366 of 2004 which came to be dismissed for non prosecution. On 20th February, 2019, this Court issued rule and passed the following order:-

- “ 1. Heard learned Counsel for the applicant.
2. This application is for restoration of writ petition No. 7366 of 2004 which stands dismissed for non prosecution. Considering the submissions made by learned Counsel for the applicant and averments made in civil application, I am satisfied that the applicant has made out case for following order:-
a) Rule.
b) Rule made returnable on 21.06.2019.
c) In addition to the usual mode of service applicant is permitted to serve the respondents by private notice*

along with entire proceedings and file affidavit of service to that effect on or before 14.06.2019.”

2. Today when the matter is called out, Mr. Garge, learned counsel for respondent no.2 vehemently opposes the application.

3. Mr. Kulkarni, learned counsel for the applicant would submit that the said petition was admitted on 13th July, 2005 and was pending for final hearing. He submits that on 13th April, 2012 the matter was listed for final hearing before this Court (Coram: Smt. R. P. Sondurbaldota,J), when the advocate for the petitioner was out of station and had also filed his leave note in accordance to the Bombay High Court Appellate Side Rules. Learned counsel would submit that the matter was called out but it was not brought to the notice of the Court that the advocate for the applicant was out of town and the leave note to that effect had been filed and therefore, the said petition came to be dismissed for non prosecution. It is submitted that the absence was unintentional and that the applicant has good case on merits and therefore, the petition be restored.

4. Having heard the learned counsel for the parties and having perused the application, let the writ petition no. 7366 of 2004 be restored.

5. Application stands allowed in the above terms.

6. List the petition on 19th January, 2023 for hearing.

(ABHAY AHUJA, J.)

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signed by
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