

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

***APPEAL FROM ORDER NO.401 OF 2021
WITH
CIVIL APPLICATION NO.18 OF 2021***

Mrs. Parbhjot Alias Prabhjyot
Kaur Jolly Wife of
Mohinder Sing N. Jolly

...Appellant

Vs

Mr. Krishan Kumar Jolly and Anr.

...Respondents

...

Ms. S.V.Sonawane with Ms. Trisha A. Singh for the
Appellant/Applicant.

Mr. Ajit S. Karwande for Respondents.

CORAM : SANDEEP K. SHINDE J.

DATE : APRIL 5, 2022.

P.C. :

Heard learned counsel for the Parties.

2 This, Appeal challenges, the order dated 22nd September, 2017, by which the learned Trial Court, in exercise of jurisdiction, under Order 9 Rule 9 of the Code of Civil Procedure, 1908 declined to restore the suit, which was dismissed for default on 30th November, 2016. It is obvious from the material and impugned

order, that the appellant was aware that, on the given date, suit was posted for filing affidavit-in-lieu-of evidence. Yet, plaintiff argued, her advocate did not apprise her progress in the suit. In consequence, she could not attend the suit proceedings. Besides, plaintiff argued, on the given date, her advocate was pre-occupied. Resultantly, suit was dismissed for default. Submission is, plaintiff's absence, in suit proceedings was not intentional, but, due to distinctive circumstance. Learned counsel appearing for the appellant has relied on the judgment of the Apex Court in the case of **Secretary, Department of Horticulture, Chandigarh and Anr. v. Raghu Raj** in Civil Appeal No.6142 of 2009 wherein the Apex Court in paragraph 28 has observed thus,

*“28 At the same time, however, when a party engages an advocate, who is expected to appear at the time of hearing but fails to so appear, **normally**, a party should not suffer on account of default or non-appearance of the advocate.”*

Ms. Sonawane, learned counsel for the appellant, therefore, submitted, let, plaintiff, do not suffer, on account of non-appearance of her advocate.

3 Mr. Karwande, learned counsel for the respondent, vehemently opposed the appeal.

4 Herein, suit was instituted, by the sister against her brother. Issues in the suit were framed. Ground taken up and pressed into service, seeking recall of dismissal order, is that advocate did not attend the suit proceedings and she was not apprised of progress in the suit. Thus, having regard to the facts of the case and in view of the judgment of the Supreme Court in the case of **Secretary, Department of Horticulture, Chandigarh & Anr. (Supra)**, the impugned order dated 30th November, 2016, dismissing the Short Cause Suit No.1429 of 2014 is set aside and the suit is restored to the file, subject to the condition that the appellant shall pay cost of Rs.50,000/- to the defendant/respondent or his counsel by Demand Draft, within two weeks from today. Subject to payment of cost, appeal is allowed and disposed of with a hope that appellant

hereinafter shall attend the proceedings on the scheduled dates.

Appeal is allowed and disposed of with application therein.

(SANDEEP K. SHINDE, J.)