

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 1921 OF 2020

IN

SUIT NO. 928 OF 2014

Zaveri Bros Silver Platers Pvt.Ltd. and
Anr.

...Applicants/
Plaintiffs

Versus

Setwel Industries

...Respondent/
Defendant

Mr. Anil D. Yadav for the Applicants/Plaintiffs.

Mr. Omprakash Pandey a/w Ms. Suchita Pandey for the
Defendant.

CORAM : R.I. CHAGLA J

DATE : 2 May 2022

ORDER :

1. Heard learned Counsel for the parties.

2. By this Interim Application, the Applicants are
seeking condonation of delay of 1204 days in filing the Interim
Application.

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3. Further relief has sought for recall/setting aside of the order dated 3rd October 2016 passed in the above Suit and the Suit No. 928 of 2014 be restored to file and heard on merits.

4. The Applicants have stated that the Applicants had filed criminal complaint on 31st December 2013 and was pursuing the criminal proceedings including Criminal Writ Petition No. 4726 of 2014 in this Court. It is further stated that proprietor of the Respondents was arrested on 13th November 2016 and released on bail pursuant to the orders of the Court. The trial is progressing.

5. It is further stated that the Suit had come up before this Court (Coram: Justice G.S. Patel) on 3rd October 2016, when the Advocate for the Applicants was absent. This Court was pleased to dismiss the Suit. It is stated that the Advocate for the Applicants did not inform the Applicants about the dismissal of the Suit. The Applicants were informed by their Advocates that a Suit of 2014 comes up in the due course, which will be after many years. The Applicants had thereafter, requested their Advocate, only in January 2020, to recheck the status of the Suit. It was found that the Suit has been dismissed

way back on 3rd October 2016. The Applicants have thereafter, changed their Advocate and their present Advocate has made this Application including for condonation of delay of 1204 days for making this Application for seeking recall of the order dated 3rd October 2016 and to restore the Suit to file.

6. Learned Counsel appearing for the Respondent/original Defendant has vehemently opposed the Application. He has stated that the Prothonotary & Senior Master by order dated 26th February 2015 had directed the Plaintiff to take steps to serve writ of summons on the Defendant failing which the Suit against Defendant will be dismissed for non compliance of High Court O.S. Rules 87. Thereafter, the Suit had been dismissed for default. On 7th October 2015, this Court had considered the prior Notice of Motion for restoration of the above Suit which came to be dismissed for default on 11th June 2015. It was stated that the Suit had been listed before the Prothonotary & Senior Master and the Plaintiffs had been directed to take steps in the matter of service of writ of summons. The service of writ of summons was effected on or before 17th June 2015 within returnable date extended by Prothonotary & Senior Master upto 25th

June 2015. However, the Suit had thereafter come up on board before this Court, but neither the Plaintiff nor the Advocate for the Plaintiff remained present. Accordingly, Suit came to be dismissed for non prosecution. Having considered the submissions of the then Advocate for the Plaintiff, this Court had restored the Suit.

7. The Plaintiffs have thereafter failed to appear on the date when the above Suit was again listed, which has been noted in the order dated 3rd October 2016 wherein this Court had observed that when the matter had been kept back in the morning session and when it was called out, on a second call none appeared for the Plaintiffs. It was noted that the Suit has been previously dismissed for default. Accordingly, this Court had finally dismissed the Suit and noted that it will not be restored to file, except, if at all, on payment of heavy costs. The interim/ad-interim orders stood vacated.

8. It is this order dated 3rd October 2016 of which the learned Advocate for the Plaintiffs seeks recall. The only explanation furnished by the Applicants is that the Advocate had not informed them of the previous dismissal of the Suit. It

is stated that only in January 2020, the Applicants had asked the Advocate to check the status of the Suit and upon which it was found that the Suit was dismissed way back in 2016. There is gross delay of 1204 days delay in taking out this Application for recalling of the order dated 3rd October 2016.

9. Having considered the submissions of the learned Advocate for the Applicants/Plaintiffs and also considering the fact that the Applicants/Plaintiffs has blamed their erstwhile Advocate for not informing of the dismissal of the Suit by order dated 3rd October 2016, in the interest of justice the Suit is required to be restored subject to paying heavy costs. It is noted that in the order of dismissal of Suit dated 3rd October 2016, of which recall is sought, this Court had observed that the Suit had previously been dismissed for default. This Court noted that the Suit will not be restored to file except if at all, on payment of heavy costs. I am therefore, inclined to restore the Suit No. 928 of 2014 to the file of this Court subject to the Plaintiffs' paying the costs of Rs. 5,00,000/- to the Defendant within a period of four weeks from the date of this order. Hence the following order :-

- (i) Delay of 1204 days in filing the Interim Application is condoned subject to payment of costs of Rs. 5,00,000/- (Rupees Five Lakh only) which shall be paid by the Plaintiffs by Demand Draft/Pay Order in favour of the Defendant within a period of four weeks from the date of this order.
- (ii) Upon compliance with the direction in clause (i) above, the order dated 3rd October 2016 is recalled and the Suit No. 928 of 2014 is restored to file and shall be heard on merits.
- (iii) Interim Application is disposed of in the above terms.
- (iv) In the event the Suit is restored, the Advocate for the Plaintiffs shall serve a copy of the Plaint together with Interim Application on the Defendant on or before 7th June 2022.

[R.I. CHAGLA J.]