

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 227 OF 2023

Arun Ramnath Desai

...Appellant

Versus

1. Smt. Late Mandakini Wd. of
Late Ramnath P. Desai (Deceased)
2. Smt. Alka Wife of Mahesh Joshi
3. Abhay Ramnath Desai
4. Union of India

...Respondents

...

Mr. Manoj P. Mhatre a/w Mr. Rakesh Purandare i/by Mr. Vasant Rajnale, for Appellant.

Mr. Arun R. Desai, Appellant is present.

Mr. Mr. Abhay Ramnath Desai, Respondent No.3 is present.

Ms. Alka Mahesh Joshi, Respondent No.2 is present.

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CORAM : SANDEEP V. MARNE, J.

DATE : AUGUST 25, 2023.

P.C.:

1. This Appeal challenges order dated 13 January 2023 passed by the City Civil Court dismissing Notice of Motion No.4519 of 2022. The Notice of Motion was filed by the Appellant for condonation of delay in taking out Notice of Motion for setting aside order dated 16 September 2003 by which the suit was dismissed in default and for restoration of the present suit.

2. Appellant-Plaintiff has instituted L.C. Suit No.3339 of 1988 on account of certain dispute with his step-mother (Defendant No.1) with regard to dues of his father payable by Respondent No.4 – Railways. It appears that the suit was earlier dismissed for default on 9 December 1991 and was later restored. The Plaintiff committed default once more on 16.09.2003 which led to dismissal of the suit on 16.09.2003. The application for restoration of the suit has been filed on 25 November 2022. The City Civil Court has refused to condone inordinate delay of 22 years.

3. Ordinarily no fault can be found in the order passed by the City Civil Court in refusing to condone 22 years delay in applying for restoration of suit. However, facts of the present case are unique. Appellant-Plaintiff's father was employed in Central Railway Workshop at Matunga and certain dues in respect of his service have not been paid on account of disputes between the Appellant-Plaintiff and the Step Mother (Defendant No.1). It appears that the Central Railway has deposited the dues in respect of employee in the City Civil Court way back on 1 September 1989. The learned Counsel for Appellant would submit that the Defendant No.1 has already expired and that she has no other legal heirs. It is his contention that now the amount deposited in the City Civil Court is required to be disbursed to the Appellant-Plaintiff and

Defendant Nos.2 & 3, who do not have any dispute amongst each other. He would submit that in fact the Appellant-Plaintiff and Defendant Nos.2 & 3 have drawn up Consent Terms and they are desirous of filing the same in the Court for the purpose of withdrawal of the deposited amount. It is for that limited purpose, restoration of the suit was sought.

4. Considering the facts and circumstances of the case, in my view, restoration of the suit would enable the Appellant-Plaintiff and Defendant Nos.2 & 3 to withdraw the deposited amount in the Court about which apparently there is no other disputes.

5. Accordingly the present Appeal is allowed.

6. Order dated 13 January 2023 passed by the City Civil Court in Notice of Motion No.4519 of 2022 is set aside. Notice of Motion No.4519 of 2022 is made absolute in terms of prayers made therein.

7. Appellant-Plaintiff and Defendant Nos.2 & 3 to appear before the Court with an authenticated of this order on 11 September 2023.

8. The Appeal is accordingly disposed of. There shall be no order as to costs.

(SANDEEP V. MARNE, J.)