

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

WRIT PETITION NO. 7613 OF 2022

The Bengal Mill Stores Supply Co.

....Petitioner

V/S.

Larsen and Toubro Limited

....Respondent

...

Ms. Gargi Warunjikar a/w. Mr. Aniket Nangare i/by. Mr. N.V Bhutekar,
for the Petitioner.

None for the Respondent.

...

CORAM: SANDEEP V. MARNE, J.

DATE : 16 JUNE 2023.

P.C.:

1. Rule. Rule made returnable forthwith. With the consent of the parties, petition is taken up for final hearing.
2. By this petition, Petitioner challenges order dated 29 August 2017 passed by the City Civil Court, Mumbai rejecting Notice of Motion No. 2134/2014 seeking restoration of the suit.
3. Plaintiff instituted Suit No. 2435/2004 in this Court seeking a money decree against the defendant. The suit came to be transferred to the City Civil Court and numbered as Summary Suit No. 7191/2004.

Issues in the suit were framed on 21 November 2013 and the suit was adjourned to 17 January 2014 for recording plaintiff's evidence. On 17 January 2014 the suit was adjourned on account of non-availability of the Court to 20 March 2014. The suit was once again adjourned to 11 April 2014. When the suit was called out on 11 April 2014, the Advocate for the Plaintiff sought time for filing Affidavit of examination-in-chief of Plaintiff. The City Civil Court however proceeded to dismiss the suit for default on 11 April 2014. On the same day i.e. on 11 April 2014, Advocate for the Plaintiff filed application for restoration of his suit. However, by an order passed on the rojnama, the City Civil Court rejected that application.

4. Petitioner-Plaintiff thereafter took out Notice of Motion No. 2134/2014 seeking restoration of the suit. The City Civil Court has proceeded to reject the Notice of Motion by an order dated 29 August 2017 which is impugned in the present petition.

5. This Court issued notice to the Respondent for final disposal on 27 June 2022. Office Report indicates that the notice of the petition has been served on the sole Respondent as per bailiff's report. Additionally the Advocate for the Petitioner has filed Affidavit of service on 28 September 2022 stating that private notice sent to the sole Respondent by way of Speed Post has been served. However, none appears on behalf of the Respondent.

6. Ms. Warunjikar, learned Counsel appearing for the Petitioner

would submit that the Petitioner was diligent in prosecuting his Suit. Even though Plaintiff's Advocate was present before the Court on 11 April 2014 and made a request for grant of adjournment for filing of Affidavit of examination-in-chief, the City Civil Court proceeded to dismiss the suit in default. On that very date, the Advocate for the Petitioner filed an application seeking restoration of the suit, but the same came to be rejected by an unreasoned order. This necessitated filing of Notice of Motion seeking restoration of Suit. She would submit that there was hardly any delay in filing the Notice of Motion for restoration. Considering the time limit allotted for restoration of the suit, the delay was hardly of 32 days. That the delay was sufficiently explained in the Affidavit filed in support of the Notice of Motion.

7. I have gone through the impugned order passed by the City Civil Court and also the Affidavit in support of the Notice of Motion seeking restoration of the suit. The suit was dismissed for default on 11 April 2014 and the Notice of Motion was filed by the Plaintiff on 17 June 2014. Therefore, it cannot be said that there was long delay in filing the Notice of Motion. Considering the averments of the Affidavit in support of the Notice of Motion, the City Civil Court ought to have allowed the application for restoration rather than rejecting the same.

8. Resultantly, the Writ Petition succeeds. The order dated 29 August 2017 passed by the City Civil Court in Notice of Motion No. 2134/2014 is set aside. Notice of Motion No. 2134/2014 stands allowed

in terms of prayers made therein and Summary Suit No. 7191/2014 stands restored on the file of the City Civil Court, Greater Mumbai. The City Civil Court shall issue summons to the Defendant and proceed to hear the Suit on merits. The learned Counsel appearing for the Petitioner assures the Court that the Petitioner-plaintiff would co-operate in expeditious disposal of the suit without seeking unnecessary adjournments.

9. Rule is accordingly made absolute.

SANDEEP V. MARNE, J.