

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.2226 OF 2023
IN
COMMERCIAL SUIT (L) NO.6322 OF 2021

Shree Sukhakarta Developers Private Limited
and others ... Applicants

In the matter between:

KD Lite Developers Private Limited and others ... Plaintiffs

Vs.

One Capitall Limited and others ... Defendants

WITH
INTERIM APPLICATION NO.1585 OF 2023

Mr. Abhishek Kothari i/b. RMG Law Associates for Applicants / Plaintiffs.
Ms. Shilpa Kapil for Defendant No.2.

CORAM : MANISH PITALE, J.

DATE : JULY 11, 2023

P.C. :

1. This is an application seeking restoration of the suit along with the prayer for condonation of delay in moving the application for restoration. The suit was dismissed on account of non-removal of office objections. There is delay of 247 days in moving the application for restoration. On the last occasion when this application was taken up for consideration, it was found that the application was filed only on behalf of plaintiff No.2. Adjournment was sought to place on record affidavits of the other plaintiffs, indicating that they support the prayers made in the present application.

2. Affidavits of all the other plaintiffs, except plaintiff No.7, have been duly filed. The affidavit of plaintiff No.7 is ready for filing. The same shall be placed on record within two weeks from today.

3. The learned counsel appearing for the plaintiffs submits that there

is indeed delay in filing the present application and the reasons for delay are stated in paragraphs 6 and 7 of the application. It is brought to the notice of this Court that the clerk in the office of the advocates had resigned and the services of an independent clerk were engaged, but due to oversight, the fact of dismissal of the suit for non-removal of office objections was not noticed. It is submitted that the application for restoration was moved as soon as this fact was noticed by the office of the advocates.

4. As regards the ground for seeking restoration of the suit, it is brought to the notice of this Court that the suit stood dismissed in pursuance of a common notice dated 06.05.2022 issued by the Prothonotary and Senior Master of this Court, whereby specified time was given to remove office objections, failing which suits covered by the common notice were to be dismissed without reference to Court.

5. It is brought to the notice of this Court that the said common notice pertained to the suits that were assigned to the Court of Riyaz Chagla, J. By referring to the extant assignment of the relevant period, it was brought to the notice of this Court that at the relevant time, when the common notice was issued, the present suit was assigned to the Court of A. K. Menon, J. (as he then was) and not to the Court of Riyaz Chagla, J. On this basis, it is submitted that the notice itself did not apply to the present suit as per the extant assignment and that therefore, the suit could not have been dismissed in pursuance of such a common notice.

6. On the other hand, learned counsel appearing for the defendant has vehemently opposed the prayers made in the present application contending that no reasons have been put forth to explain delay of 247 days in moving the application. It is submitted that the grounds raised for seeking restoration of the suit does not deserve consideration as the

delay itself is not properly explained.

7. This Court has considered the material on record. The reasons stated in paragraphs 6 and 7 of the application, explaining the reasons for delay, in the opinion of this Court, do make out sufficient cause for condoning the delay. Accordingly, delay deserves to be condoned.

8. The ground raised in support of the prayer for restoration of the suit also deserves consideration for the reason that the common notice in pursuance of which the present suit stood dismissed for non-removal of office objections, could not have applied to the present suit in the light of the extant assignment. Therefore, sufficient ground is also made out for restoration of the suit.

9. Nonetheless, the office of the advocates of the plaintiffs was expected to supervise the clerk associated with the office in a better manner and therefore, restoration of the suit in the present case, shall be subject to imposition of costs.

10. In view of the above, the application is allowed. The delay is condoned. The suit is restored to file subject to the plaintiffs depositing an amount of Rs.10,000/- towards costs in the account of Kirtikar Library, bank details whereof are as under:-

Name : Kirtikar Law Library
Bank : Bank of India
Branch : Mumbai Main
Savings Bank Account No.000110110012632
IFSC Code: BKID0000001
MICR Code: 400013087

11. Office objections, if any, shall be removed within two weeks. The application stands disposed of.

(MANISH PITALE, J.)