

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

**INTERIM APPLICATION NO. 2557 OF 2022
IN
SUIT NO. 839 OF 2018**

Suresh Harishchandra Sawant ... Applicant (Orig. Plaintiff)

In the matter between

Suresh Harishchandra Sawant & Ors. ... Plaintiffs

Versus

Deepak Meghji Sawla & Anr. ... Defendants

Mr. Bhushan Walimbe for the Applicant.
Mitaali Shah i/b Vaibhav Mehta & Associates for the Defendants.

CORAM : R.I. CHAGLA, J.

DATED : 11th APRIL, 2023.

ORDER :

1 By this Interim Application, the Applicant/Original Plaintiff has sought recall of the order dated 30.03.2022 and for restoration of Suit No.839 of 2018 with Interim Application No.1034 of 2020 to the file to be heard on merits.

2 The Applicant/Plaintiff has stated that the Suit with Interim Application No.1034 of 2020 taken out in the suit, was listed before this Court on 16.03.2022 and 30.03.2022, on which dates the Applicant/Plaintiff had not remained present. The Applicant has stated that this was due to oversight. In the absence of the Advocate for the Applicant/Plaintiff, this Court passed order dated 30.03.2022 dismissing the Suit along with Interim Application for default. The Applicant has stated that the absence of the Advocate for the Applicant on the aforementioned dates is neither intentional nor deliberate. The Prothonotary and Senior Master had prior thereto passed directions for the Suit to proceed ex-parte. Accordingly, the Applicant has stated that if the relief sought for in the present Interim Application is not granted, grave prejudice will be caused to the Applicant/Plaintiff.

3 The learned Counsel appearing for Defendant Nos.1 and 2 has sought time to file affidavit in reply.

4 It is noted that by order dated 10.11.2022 this Court had granted time of two weeks for filing affidavit in reply as copy of the Interim Application has been served on the Defendants. Further, an affidavit of service dated 21.10.2022 has been filed which shows service. Accordingly, no further time can be granted to the Defendants.

5 In view of the Suit having been dismissed for default of the Advocate for the Applicant, the Applicant should not be made to suffer.

Hence the following order is passed :

- i) The order dated 30.03.2022 is recalled.
- ii) Suit No.839 of 2018 with Interim Application No.1034 of 2020 is restored to file.
- iii) Interim Application is accordingly disposed of.

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(R.I. CHAGLA, J.)