

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

**INTERIM APPLICATION NO.2273 OF 2023
IN
COMMERCIAL APPEAL NO.67 OF 2017
IN
ARBITRATION PETITION NO.1345 OF 2012**

The Memon Co-operative Bank Ltd.	... Applicant
<u>In the matter between</u>	
The Memon Co-operative Bank Ltd.	... Appellant
V/s.	
Rajan Ramchand Gera & Anr.	... Respondents

Mr. Raj Patel a/w Mr. Jayesh Patel for the Applicant.
Mr. Sagar A. Rane for Respondent No.1.
Mr. Harshad Sathe for Respondent No.2.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : 19th AUGUST 2023

P.C. :

The present Interim Application seeks restoration of the captioned Appeal, which came to be dismissed on 15th December 2022. The reason for dismissal was because none appeared on behalf of the Appellant.

2. On a perusal of the Interim Application we find that the reason stated for the Appellant's non-appearance was stated to be that the junior Advocate, who was entrusted with the work of *inter alia* checking the board did not inform the Appellant's Advocate that the matter was listed on the weekly board for the period from 15th December 2022 to 16th December 2022.

3. We find it most unfortunate that the Appellant's Advocate on record has sought to lay the blame for non-appearance at the hands of a junior Advocate, who had infact enrolled as an Advocate less than two months before the date on which the said Appeal came to be dismissed. What is worse still is that the said junior Advocate has been made to file an Affidavit stating that the inadvertence was at her end.

4. On making our displeasure to this course of conduct known, Mr. Patel, learned Counsel appearing on behalf of the Applicant/Appellant immediately tendered an apology to the Court and submitted that the Applicant/Appellant would

immediately expunge the name of the junior Advocate from the record. Mr. Patel then submitted that the Applicant/Appellant had always prosecuted the said Appeal diligently and therefore ought to be granted one more chance to prosecute the said Appeal. Basis this, he submitted that the said Appeal be restored to file in the interest of justice and equity.

5. Mr. Sathe, the learned Counsel appearing on behalf of Respondent No.2, submitted that the present Interim Application had been filed in the most cavalier and casual manner. He pointed out that the deponent of the Interim Application had in the Affidavit in Support deposed to facts which had occurred prior to his joining the employment of the Applicant/Appellant as being to his personal knowledge. He thus submitted that the Appeal, if restored, must be subject to some terms.

6. Having considered the rival contentions as also the peculiar facts of the present case, we find that the Appellant had, until the date of dismissal of the Appeal, appeared and

prosecuted the matter. We find that the interest of justice would be served, if the captioned Appeal is therefore restored to file and the Appellant is granted one chance to prosecute the same.

7. In the facts of the present case, especially in view of what we have observed in Paragraphs 3 and 4 above, it would be apposite that instead of granting costs in the conventional sense, that the learned Advocate on record for the Appellant gift a copy of 'The Indian Constitution : Cornerstone of a Nation by Granville Austin' to the learned junior Advocate, whose name finds mentioned in Paragraphs 6 and 7 of the Interim Application. This, in our view, would serve as a gesture of goodwill and erase any misunderstanding or ill will that may have occurred in the mind of learned junior Advocate, whose name finds mentioned in Paragraphs 6 and 7 of the Interim Application. We must note that the learned Counsel for the Appellant was readily agreeable to the course of action proposed by us.

8. With these observations, the Interim Application is therefore allowed and disposed of accordingly.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)