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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1365 OF 2018
IN
REJECTED CASE NO.118 OF 2013

Mahesh Totaram Wadhwa : Applicant
Vs.
Brihanmumbai Municipal Corporation : Respondent

Adv. Indrajeet Yadav, for the Applicant.
Adv. Santosh Parad, for the Respondent/MCGM.

CORAM : KISHORE C. SANT, J.

DATE : 14TH FEBRUARY, 2024

P.C. :

1. Heard the parties.

2. This Application is filed seeking restoration of the Civil Application bearing stamp No. 18458 of 2008. There is delay of 5 years 320 days caused in filing this Application. Civil Application was dismissed in view of the order dated 14th October, 2008.

3. This Court had granted rule returnable on 14.11.2008. The Applicant was directed to serve Respondents by private mode of service and file affidavit, in case of failure the Application to stand dismissed for

want of prosecution. It is submitted that the Respondent was served by way of private mode. The acknowledgment was also handed over to the clerk of the Advocate for the Applicant. However in spite of that the learned Advocate could not file the said acknowledgment in the office within time. Since the Applicant had already handed over acknowledgment he was under impression that compliance is made. Thereafter the Applicant and lawyer lost track of the Application. In February, 2014, the Applicant was required to undergo operation because of cataract problem. In July, 2014, the Applicant made an inquiry to the Advocate, it is at that time on inquiry, it revealed that the matter stood dismissed. It is the case of the Applicant that because of the inadvertent mistake on the part of the learned Advocate, the Application came to be dismissed. He has also produced on record copies of the relevant documents and the copies of notice served upon the Corporation with an endorsement of service on 12th November, 2008. It is seen that in fact a private notice was served upon the corporation.

4. Looking to the facts above, this Court finds that the Applicant should not suffer because of the inadvertent mistake of the Advocate. This Application needs to be allowed by restoring Civil Application No.4290 of 2008 to its original position.

5. Civil Application stands allowed.

6. The Civil Application Stamp No. 4290 of 2008 stands restored to its original position.

(KISHORE C. SANT, J.)