

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 16454 OF 2023

Sudhakar Narayan Waghmare & Ors.

.. Petitioners

Versus

Pramod Narayan Waghmare & Ors.

.. Respondents

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- Mr. Chetan G. Patil i/by Mr. Mandar G. Bagkar for Petitioners
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 31, 2024

P. C.:

1. Not on board. Mentioned. Taken on board.
2. Heard Mr. Patil, learned Advocate for Petitioner. Perused the praecipe dated 31.01.2024.
3. This Writ Petition takes exception to the order dated 05.10.2023 passed by the learned Judge of Bombay City Civil Court at Bombay rejecting Notice of Motion No. 1306 of 2023 which sought restoration of L.C. Suit No. 644 of 2012 which was dismissed for default and the proceedings were directed to be closed. There was also a delay of 67 days of which condonation was sought in the Notice of Motion.
4. I have heard Mr. Patil and perused the order dated 05.10.2023 which is at page Nos. 117-124 of the Writ Petition. The learned Trial Court has considered the submissions of the Defendants that no plausible reason was given and the Notice of Motion filed was vague and improper. Defendants further contended that the Advocate for

Plaintiffs was aware about dismissal of the Suit on 13.12.2022 but did not take any steps to restore the suit proceedings. *Per contra* it was the Plaintiffs' case that the Plaintiffs as well as their Advocate were under the bonafide impression that on the date of dismissal of the suit, the suit proceedings would be called out in the afternoon session and when it was learnt that the Suit came to be dismissed, an oral application was indeed made which was not considered by the learned Trial Court on that date. The same is recorded while recording their submissions in paragraph No. 3 of the impugned order. Though there is admittedly some delay on the part of the Plaintiffs, considering the fact that issues were already framed in the year 2020, Plaintiffs cannot be non suited. In order to render substantial justice, I am inclined to allow the Writ Petition subject to costs of Rs. 5000/- to be paid to Kirtikar Law Library, High Court, Mumbai within a period of two weeks from today.

5. In view of the above, impugned order dated 05.10.2023 is quashed and set aside and the Notice of Motion No. 1306 of 2023 stands allowed subject to the aforesaid costs being paid. L.C. Suit No. 644 of 2012 is restored back to the file of the Bombay City Civil Court at Bombay. In view of the fact that the suit plaint filed in the year 2012, the same is directed to be disposed as expeditiously as possible and preferably within 12 months from today.

6. With the above directions, Writ Petition is disposed.

Amberkar

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[MILIND N. JADHAV, J.]