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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL REVISION APPLICATION NO. 780 OF 2023

M/s. Textile Aniline and Chemicals Company
Private Limited .. Applicant

Versus

Municipal Corporation of Greater Mumbai and
Anr. .. Respondents

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- Mr. Ashok R. Pande a/w. Shobhit Shukla, Advocates for Applicant.
 - Mr. R.Y. Sirsikar a/w. Mr. Sagar Patil, Advocates for Respondents – BMC.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 03, 2024.

P.C.:

1. Heard Mr. Pande, learned Advocate for Applicant and Mr. Sirsikar, learned Advocate for Respondents – BMC.

2. The present Civil Revision Application takes exception to the order dated 02.12.2023 passed in Notice of Motion No.87 of 2020 by the learned Trial Court. Notice of Motion was filed for setting aside the order dated 10.12.2019 of withdrawal of L.C. No.4658 of 2012 alongwith Notice of Motion No.3143 of 2012.

3. Mr. Pande would submit that originally and initially Plaintiff had filed two specific Suits namely Suit No.1139 of 2011 and Suit No.4658 of 2012 challenging two separate notices issued under

Section 351 of the Mumbai Municipal Corporation Act in respect of the godown structure in Suit No.1139 of 2011 and in respect of the suit structure in Suit No.4658 of 2012. The notices were issued against the Plaintiff – Company for unauthorized construction of mezzanine floor and toilet therein.

4. Mr. Pande would submit that on 02.11.2012, the learned City Civil Court passed interim order in both the Suits and this is not disputed by the Corporation.

5. With the passage of time, Plaintiff demolished the construction of the mezzanine floor and toilet situated in the godown structure which was the suit premises in Suit No.1139 of 2011.

6. In that view of the matter, Plaintiff desired to withdraw the said Suit No.1139 of 2011 and accordingly instructed his Advocate appearing for the Plaintiff – Company in the City Civil Court to do so.

7. He would submit that order of withdrawal was passed in respect of Suit No.1139 of 2011 which was sought to be withdrawn by the Plaintiff. But at the same time, inadvertently a separate identical order was also passed and Suit No.4658 of 2012 was also withdrawn by mistake on 10.12.2019.

8. In view of the above, immediately after realizing that Suit No.4658 of 2012 was withdrawn mistakenly, the Petitioner – Plaintiff

filed Notice of Motion for setting aside of the order dated 10.12.2019 in Suit No.4658 of 2012. This Notice of Motion was filed on 04.01.2020 by the Petitioner. By the impugned order dated 02.12.2023, this Notice of Motion has been dismissed on the specious ground that no fraud was pleaded at the time of withdrawal of the said Suit as also in the Application made for seeking restoration.

9. I have perused the impugned order dated 02.12.2023 with the able assistance of Mr. Pande and Mr. Sirsikar both. On perusing the order, as noted above, there were two Suits which were filed by the Plaintiff – Company and out of which in so far as Suit No.1139 of 2011 is concerned, only that particular Suit was sought to be withdrawn. It is however an admitted position seen from the record that on 10.12.2019, the second Suit namely Suit No.4658 of 2012 was also withdrawn by the Plaintiff.

10. Resultantly, interim order dated 02.11.2012 passed in Notice of Motion No.3143 of 2012 in Suit No.4658 of 2012 also came to an end and the Notice of Motion also stood disposed of.

11. I have perused the present Civil Revision Application.

12. The verification of the Notice of Motion No.87 of 2020 filed for seeking restoration by the dismissed Suit is by the Constituted Attorney of the Plaintiff – Company.

13. In view of the above timeline and the reasons furnished, I am inclined to believe the grounds submitted and advanced by Mr. Pande in so far as the mistake withdrawal of Suit No.4658 of 2012 is concerned.

14. I have also heard Mr. Sirsikar who has drawn my attention to the contents of paragraph No.5 of the impugned order and read the same.

15. Merely because the Plaintiff – Company has not stated that by praying misrepresentation earlier the Suit was not withdrawn cannot be the sole ground to dismiss the Notice of Motion. The Plaintiff enjoyed protection of the interim order dated 02.11.2012 for more than 7 years thereunder and only after realizing its mistake which had occurred, immediately Notice of Motion was filed pleading the ground of mistaken identity and instructions which were given for withdrawal of the other Suit.

16. In view of the above observations and findings, the impugned order is not sustainable and is therefore quashed and set aside.

17. Suit No.4658 of 2012 stands restored to the record and file of the City Civil Court. The order dated 02.11.2022 passed in Notice of Motion No.3143 of 2012 also stands restored, revived and shall operate until vacated or set aside.

18. Nothing decided in the above order is adjudicated on merits of the matter nor any opinion rendered by the Court herein is on merits and the Suit shall proceed on its own merits and strictly in accordance with law.

19. With the above directions, Civil Revision Application is allowed and disposed.

[MILIND N. JADHAV, J.]

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