

Sumedh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 635 OF 2024
IN
WRIT PETITION NO. 318 OF 2017

Madhuri Vijay Chande ...Applicant
In the matter between
Madhuri Vijay Chande ...Petitioner
Versus
Municipal Corporation of Greater Mumbai & Ors ...Respondents

Mr Sushant D Chavan, *for the Applicant.*
Mr Anil Sakhare, Senior Advocate, *i/b Ritesh Singh, for Respondent*
No 5.
Mr Kunal Waghmare, *for the Respondent-MCGM.*

CORAM G.S. Patel &
Kamal Khata, JJ.
DATED: 8th March 2024

PC:-

1. The Interim Application (“IA”) seeks restoration of the Writ Petition that was rejected on 13th March 2023. The dismissal was for default and for want of prosecution.
2. The reason given for seeking restoration is the same as in IA No 632 of 2024 namely that the Advocate of the Petitioner did not have the necessary entry in his personal diary and on that day only one of the matters was listed.

SUMEDH
NAMDEO
SONAWANE

Digitally signed by
SUMEDH NAMDEO
SONAWANE
Date: 2024.03.11
10:56:47 +0530

3. But if the matter is listed on board and the appearance of the Advocate is shown (and there is no complaint in this regard), it is the duty of the Advocate to check from the board and not rely only on some diary.

4. Even if the law is that a litigant should not suffer for the fault of the advocate, this does not mean that a litigant should not be vigilant and diligent in prosecuting her or his case. Here too, as in the other case, the answer is that the Applicant learnt of the order of dismissal only on 5th February 2024 when the Applicant visited the premises of the 5th Respondent and found that the shutter of the garage had been damaged. But this does not tell us when that damage or the demolition or removal was done and why the Petitioner waited until 5th February 2024 to try and carry out these repairs. There is not a word of explanation in this regard.

5. Municipal actions against structures cannot continuously be defeated like this.

6. There is no substance in the IA.

7. The IA is rejected.

(Kamal Khata, J)

(G. S. Patel, J)