

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

APPEAL FROM ORDER NO. 320 OF 2024

M/s. Tirthroop Electrical

...Appellant

Versus

M/s. T. T. Blades

...Respondent

Mr. Gauraj Shah a/w Mahesh Chitnis a/w Siddhant Kulkarni i/b
Chitnis Vaithy and Co. for the Appellant on 14th and 15.01.2025.

Mr. Aakash Kothari i/b. Little and Co. for Respondent on 14.01.2025.

Mr. Meit Sampat i/b Little and Co. for the Respondent on 15.01.2025.

CORAM : M. M. SATHAYE, J.

**DATED : 15th JANUARY 2025
(IN CHAMBER)**

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P.C. :

1. Learned counsel for the parties were heard on 19.12.2024 and 14.01.2025 and the appeal is kept today for passing order.
2. The Appellant is original Plaintiff and the Respondent is original Defendant. The Appellant has challenged the impugned Order dated 16.07.2019 passed by City Civil Court, Mumbai in Notice of Motion No. 4448 of 2018 in Suit No. 8698 of 1998. By this order, the Appellant's motion to restore the suit, which was dismissed for default, has been dismissed.
3. Delay caused in filing this appeal from order has been duly condoned by order dated 02.04.2024 passed in I. A. No. 10037 of 2022.

4. Heard learned counsel for the Appellant. His case is as under. That in September 1998, the said suit was filed in this Court. It was for recovery of Rs. 14,00,308/- with interest from the Respondent arising out of a business transaction. The suit remained pending for several years till 2006. On 08.11.2006, the Respondent filed Written Statement and directions were issued for filing affidavit of documents and inspection. None of the parties filed affidavit of documents or completed inspection, as directed. In September 2012, the suit was transferred to City Civil Court, Mumbai owing to change in pecuniary jurisdiction. That neither the partner of the Appellant who was looking after the litigation, nor its lawyer were aware of the details of the transferred suit, such as its court room number or listing dates etc. That no notice of transfer of the suit was received by the Appellant or its advocate.

5. It is further contended that the Appellant's partner used to take follow-up with Adv. Mr. Vachan Bodake, who was looking after the matter at the relevant time on behalf of the law firm, about progress of the suit. However every time, the Appellant would ask, the said Advocate informed that the suit is pending. It is contended that said Advocate thereafter retired from the law firm, on or about 31.12.2017 without informing anything about dismissal of the suit to the other continuing partners. That in such circumstances, finally in August 2018, the other continuing partners of the law firm found out the status of the suit and finally on 19.08.2018, applied for certified copy of the entire roznama and received it on 03.09.2018. That thereafter immediately on 20.10.2018, the present motion is filed.

6. Learned Counsel for the Appellant submitted that in the Affidavit in support of motion, all the dates and events are stated on oath. That sufficient cause is made out for restoration. That the apparent delay is mainly because of lack of knowledge of dismissal. That after getting roznama, it has transpired that on 01.12.2012, the matter was listed for directions, when nobody appeared. Then after a lapse of 1 year, it was again listed on 25.02.2013, when again nobody appeared. Finally it was posted on 02.03.2013, when it was dismissed for want of prosecution.

7. Learned counsel for the Appellant has relied on Section 6 of Maharashtra Act No. 25 of 2012 in support of his contention about possible reason why notices were not received by the Appellant after transfer of the suit to City Civil Court. It is finally urged that the party should not suffer for the mistake of the Advocate and the motion was filed within reasonable time after knowledge about dismissal. It is submitted that the Appellant is ready to abide by orders of costs that can be issued to compensate the other side or any other orders putting the Appellant to terms.

8. On the other hand, learned Counsel for the Respondent opposed the appeal, contending *inter alia* that there is inordinate delay of 2073 days in filing the motion. He submitted that no sufficient cause is made out and the learned Trial Judge has considered all the relevant dates properly and no interference is called for. He submitted that valuable right is accrued to the Respondent and the same should not be disturbed. He further submitted that even this appeal is filed belatedly and therefore no

indulgence be shown.

9. I have considered the rival submissions and perused the record.

10. At the outset, the delay in filing present appeal from order is not relevant consideration, since that delay is already condoned and that order is not shown to have been challenged, varied or set aside.

11. The suit was filed in 1998 which remained pending in this Court till November 2006. From the Roznama produced on the record, it is apparent that on 08.11.2006, the matter was listed before this Court when written statement was taken on record and the affidavit of documents were directed to be filed within four weeks and the inspection was directed within four weeks thereafter and the matter was to be listed for final hearing in May 2007. The matter was thereafter listed before the City Civil Court, post transfer, on 01.12.2012 and 25.02.2013, when neither the Plaintiff nor the Defendant or their Advocates were present. The Roznama further shows that on 02.03.2013 also, neither the Plaintiff nor the Defendant nor their Advocates were present and the suit was dismissed for want of prosecution.

12. It is settled law that it is not the length of delay but the explanation for such delay, is material consideration.

13. The Appellant has made out a clear case of lack of knowledge till he obtained Roznama on 03.09.2018 and thereafter the Motion is filed immediately 20.10.2018. The law-firm which is representing the Appellant today, was also representing the Appellant when the Suit

was dismissed for default and when steps were taken to obtain certified copy of Roznama by filing application dated 19.08.2018.

14. The case of the Appellant is that the concerned partner of the Appellant was taking follow-up with the concerned Advocate of its law firm – Mr. Vachan Bodke, who kept informing that the Suit was pending whenever an inquiry about its status was made. Nothing is brought on record to indicate that effective notices were received by the Appellant or its Advocate after its transfer to the City Civil Court.

15. Section 6 of the amending Act (Mah. 25 of 2012) which amended the Bombay City Civil Court Act, 1948 (on 01.09.2012 / 01.10.2012), reads as under:

“6. After the date of coming into force of section 4 of the Bombay City Civil Court (Amendment) Act, 2012, in all the suits and proceedings which are liable to be transferred to the City Court under sub-section (a) of section 4A, in order to obviate the need for service of fresh notice upon the parties, the High Court shall list the matters on its Boards and notify the date on which the concerned matter shall be listed before the City Court.”

16. Therefore, it is clear that the Suits which were transferred to the City Civil Court were notified on the board of the High Court and the next dates of listing in the City Civil Court were notified. This information, if at all, was therefore obviously within the knowledge of the Advocate and not of the partner of Appellant himself. Therefore, there is no material on record to show that till September 2018 the Appellant/party had sufficient and effective knowledge about the dates in the Suit, after its transfer to the City Civil Court, including the date on which it was dismissed for want of prosecution.

17. It is submitted by the learned Counsel for the Appellant that Advocate Mr. Bodke, who was looking after the matter, retired from the law firm without informing anything about the present Suit to other partners and in such circumstances, on persistent inquiry by the Appellant, necessary application for certified copies of Roznama was made on 19.08.2018. Therefore, this is a clear case where the Appellant/party has suffered lack of knowledge, for the fault of the Advocate and therefore, continuation of such sufferance cannot be countenanced. In my considered opinion, sufficient cause is made out in the peculiar facts of this case.

18. Perusal of the impugned order shows that the Trial Judge has found fault with the affidavit-in-support of the Motion, to interpret that since the deponent has stated that he was in touch with the said Advocate regarding follow-up of the suit, Appellant was aware of the pendency of the suit in the City Civil Court. The learned Trial Judge has also found fault with the statement that the Appellant's partner looking after the litigation (deponent) was senior citizen and due to his ill-health, he was unable to give instructions to the Advocate. This stand is interpreted to run contrary to the stand of continuous follow-up.

19. In my view, such interpretation of the affidavit in support of the Motion is hyper-technical and harsh. The aspect of proper and effective notice to the party, in long pending suit after its transfer to other Court, has not been considered. When suits are transferred from one court to other, due to change in pecuniary jurisdictions, the Court often comes across cases of lack of knowledge to litigants who

are completely dependent upon their advocates. So also, the settled principle of law that the party/litigant should not suffer for the fault of the Advocate, has also been ignored. In that view of the matter, the impugned order cannot be sustained and needs interference. Obviously, if the suit is to be restored, the Respondent/Defendant will have to be compensated for revival of the proceedings against it. Considering the length of delay, in my view costs of Rs.25,000/- will be appropriate.

20. Since the law firm representing the Appellant at the relevant time when the Suit was dismissed for default is also representing the Appellant today, and since the case made out is of the Appellant not being properly informed about progress in the suit, question arises as to who should bear the costs for restoration. On a specific query by the Court in that regard, learned Counsel for the Appellant has fairly accepted that the law-firm of the Appellant will bear the necessary costs.

21. In that view of the matter, the Appeal from order is allowed as under :

(i) Subject to Appellant's above law-firm paying costs of Rs.25,000/- to the Respondent within a period of 3 weeks from today, and in the event of the law-firm not paying costs in time, the Appellant (Party) paying the same within 3 weeks thereafter, the impugned order dated 16.07.2019 is set aside and the Notice of Motion No. 4448 of 2018 is allowed, thereby

restoring the suit.

(ii) The costs can be paid directly or can be deposited in the Trial Court; if the costs are deposited within stipulated time, the Respondent is at liberty to withdraw the same.

(iii) If the costs are not paid as directed above, the impugned order will stand.

(iv) The Trial Court shall hear the suit on its own merits, in accordance with law, from the stage at which it was dismissed for want of prosecution.

(v) The Appellant is directed not to take any unnecessary adjournment and co-operate with the Trial Court for disposal of the suit as per suitable directions that may be issued by the Trial Court.

22. All concerned to act on duly authenticated or digitally signed copy of this order.

(M.M. SATHAYE, J.)