

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).6723 OF 2010
(arising out of SLP(C)No.4253/2009)

NORMADIE CO-OPERATIVE HOUSING
SOCIETY LTD.

...Appellant(s)

VERSUS

M/S MAHENDRA BUILDERS AND OTHERS

...Respondent(s)

O R D E R

Leave granted.

The suit for permanent injunction filed by the appellant was dismissed by the learned Single Judge of the High Court on 7.7.2005 because the witness, who was to be examined on that day, had failed to appear and even the Advocate for the plaintiff was not present. Notice of Motion No.2066 of 2005, filed by the appellant for restoration of the suit was dismissed by the learned Single Judge with cost of Rs.25,000/- on the grounds that the applicant-plaintiff had not impleaded the contesting defendant nos.6 and 8 and no tangible cause was shown for non-appearance of the witness and the advocate on 7.7.2005.

2

The appellant challenged order of the learned Single Judge in Appeal (L) No.66 of 2007. It also filed Notice of Motion No.997 of 2007 for condonation of two days' delay in filing of the appeal. The Division Bench of the High Court refused to condone the delay and disposed of the appeal by recording the following order:

"In view of the dismissal of the notice of motion for condonation of delay, the appeal lodging No.66 of 2007 also stands disposed of."

Shri Shyam Divan, learned senior counsel appearing for the appellant, submitted that due to inadvertent mistake, some of the defendants in the suit were not impleaded as parties in the Notice of Motion filed for restoration of the suit, but notice thereof had in fact been served upon all the defendants including defendants nos.6 and 8 and they had appeared and contested the Notice of Motion. Learned senior counsel then submitted that the view taken by the Division Bench is hyper-technical and dismissal of the appeal on the ground of delay has resulted in failure of justice.

Shri Ashok Desai, learned senior counsel appearing for the contesting respondents, fairly stated that even though defendants nos.6 and 8 in the main suit had not been made

3

parties in the Notice of Motion filed by the appellant for restoration of the suit, but they were served with the notice of the Notice of Motion of 2005 and had appeared and contested the prayer of the plaintiff for restoration of the suit.

In view of the statements made by the learned senior counsel for the parties, we are satisfied that the orders passed by the Division Bench dismissing the application for condonation of delay and the appeal filed against the order of the learned Single Judge, cannot be sustained and are liable to be set aside.

Accordingly, the appeal is allowed. The impugned orders are set aside and the matter is remitted to the High Court for fresh disposal of the appeal filed by the appellant against the order of the learned Single Judge dismissing Notice of Motion No. 2066 of 2005.

.....J.
(G.S. SINGHVI)

.....J.

NEW DELHI,
AUGUST 16, 2010.

4

ITEM NO.46

COURT NO.11

SECTION IX

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).4253/2009
(From the judgement and order dated 13/06/2008 in AL No. 66/2007 &
SN No. 516/1975 & NOM No. 2066/2005 of The HIGH COURT OF BOMBAY)

NORMADIE CO-OP.HOUSING STY.LTD. Petitioner(s)
VERSUS
M/S MAHENDRA BUILDERS & ORS. Respondent(s)

(With appln. for appropriate orders/directions seeking permission
to delete the names of respondent nos.2,3,4 & 7 from the array of
parties)

Date: 16/08/2010 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE G.S. SINGHVI
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Shyam Divan, Sr. Adv.
Ms. Surekha Raman, Adv.
For M/S. K.J. John & Co.,Advs.

For Respondent(s) Mr. Ashok Desai, Sr. Adv.
Mr. Sameer Parekh, Adv.
Mr. Ranjit Shetty, Adv.
Mr. Arjun Garg, Adv.
Mr. Rajat Nair, Adv.
For M/S. Parekh & Co.,Advs.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

In terms of signed order, the appeal is
allowed. The impugned orders are set aside and the
matter is remitted to the High Court for fresh disposal
of the appeal filed by the appellant against the order
of the learned Single Judge dismissing Notice of Motion
No. 2066 of 2005.

5

(A.D. Sharma) (Phoolan Wati Arora)
Court Master Court Master
(Signed Order is placed on the file)