

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4745 OF 2015

MOHAN BHANUDAS ANDHALE
VERSUS
STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioners : Mr. Chondhekar Balaji S.
AGP for Respondents: Mr. K.M. Suryawanshi
.....

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.**

DATED : 6th AUGUST, 2015

P.C. :-

1. Mr. Chondhekar, the learned counsel for the petitioner submits that the petitioner had filed Original Application against the punishment imposed upon him. The Original application came to be dismissed in default. There was delay in filing the restoration application. The petitioner filed restoration application alongwith the application for condonation of delay. However, the advocate for the petitioner remained absent consistently. The said application was also dismissed in default and the registration of Original Application St. No. 270 of 2011 is refused. Learned counsel submits that it is because advocate remained absent, the orders are passed. The petitioner relied on is advocate. The petitioner was enquiring with his advocate about the progress of the case. Immediately, when the petitioner got knowledge about rejection of the restoration application, the petitioner has taken

out the copies and has immediately filed the present writ petition. The learned counsel submits that the petitioner may not be made to suffer for the fault of his advocate.

2. The learned A.G.P. states that it was not a question of one or two days but the petitioner's advocate consistently remained absent even for conduct of the Original Application and subsequently in conducting the Misc. Application also. There is no error in the order passed by the Tribunal.

3. We have considered the submissions. It is a matter of record that advocate of the petitioner consistently remained absent before the Tribunal. Even while prosecuting the Misc. Application, the advocate of the petitioner consistently remained absent. Even his Original Application was not registered and came to be rejected. The learned Member of the Tribunal has detailed all these aspects in the order.

4. Though the order cannot be faulted. It is also a fact that it is only because of the absence of the advocate for the petitioner, the matter was required to be dismissed. It is trite that the litigant should not be made to suffer for the absence of his advocate. Considering the said aspect of the matter, we are inclined to give one more opportunity to the petitioner. However, the petitioner also deserves to be mulct with costs.

5. In the result, we pass the following order:-

O R D E R

- I. The impugned order is quashed and set aside.
- II. Miscellaneous Application Nos. 90 of 2014 and 113 of 2011 are allowed. Original Application (St.) No. 270 of 2011 is restored to its original position on the condition that the petitioner pays costs of Rs.10,000/- (Rupees Ten thousand only) to the respondents on or before 3.9.2015. The petitioner may deposit the said cost amount in the Tribunal on or before 3.9.2015 or shall pay the same directly to the respondent. Upon deposit the amount of costs, the Tribunal shall consider Original Application.
- III. Writ petition is accordingly allowed and disposed of. No costs.

(V. K. JADHAV, J.)

(S. V. GANGAPURWALA, J.)

vre/