

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1451 OF 2014
IN
WRIT PETITION NO. 8204 OF 2012**

M. G. Waikar	..Applicant
Vs.	
UCO Bank & Ors.	..Respondents

Mr. R. N. Sanghavi with Mr. Sagar Batavia and Ms Anjali Mehta for the Applicant

Ms Chandana Salgaonkar for the Respondent No.2

**CORAM : R. M. SAVANT, J.
DATE : 22nd JANUARY, 2015**

P.C.

1 The above Civil Application has been filed for restoration of the above Writ Petition which has stood dismissed on account of the conditional order dated 30-1-2013 passed by a Learned Single Judge of this Court (R.G.Ketkar, J.). The above Petition had appeared for admission on 17-10-2012 when notice came to be issued and was made returnable on 22-11-2012, it appears that the notices were not forwarded to the Respondents in view of the fact that the Bhatta charges were not paid by the Petitioner. The Petition therefore appeared before a Learned Single Judge of this Court (R.G.Ketkar, J.) on 30-1-2013 when a conditional order came to be passed permitting the Petitioner to pay Bhatta charges within one week, failing which the Petition was to stand dismissed for non prosecution. In view of the failure of the Petitioner to pay Bhatta charges, the said order dated 30-1-2013 became

operative and the Petition stood dismissed for non prosecution.

2 The instant Civil Application has been filed in April 2014 and in the above Civil Application it has been pleaded that Advocate for the Petitioner Mr.Sanghavi was down with herpes and because of the said fact the aspect of payment of Bhatta charges of the Petition, and the Petition being dismissed on account of the conditional order was not known to him. It has further been mentioned in the Civil Application that because of the said illness the Advocate was mentally up set and therefore no steps were taken immediately. It has further been mentioned that after coming to know that the Petition stood dismissed on account of the conditional order that was passed in the Petition that the instant Civil Application has been filed in April 2014.

3 The reasons put forth in the above Civil Application has been questioned on behalf of the Respondent No.2. The Respondent No.2 has been transposed as the Plaintiff on 1-7-2004. The Respondent No.2 has also annexed material by way of orders passed by various Courts in this Court showing that Advocate Mr. Sanghavi was in fact appearing before the said Courts and therefore the ground made out or the reason put forth justifying the delay cannot be accepted.

4 The Learned Counsel for the parties made submissions in respect

of their respective assertions. The Learned Counsel appearing for the Applicant would contend that for the reasons mentioned in the application that the delay has occasioned in filing the above Civil Application be condoned. Whereas, the Learned Counsel for the Respondent No.2 would reiterate the grounds which have been set out in the affidavit in reply as to why the reasons put forth do not deserve to be accepted.

5 As indicated above, the reasons on the basis of which the condonation of delay in filing the above Application is sought revolve around the Advocate Mr. Sanghavi. The delay has been attributed to his illness and thereafter his mental state. It is well settled that a party should not suffer on account of the acts of the Advocate, even if the grounds mentioned in the affidavit in reply filed by the Respondent No.2 do not inspire confidence. Applying the principle that a party should not suffer on account of the acts of the Advocate, in my view, the Petitioner is required to be given a chance to prosecute the above Petition on merits rather than being thrown out on technicalities. In that view of the matter, the above Civil Application is required to be allowed and is accordingly allowed. The above Writ Petition is restored to file. In the facts and circumstances of the case, the Petitioner to deposit costs of Rs.5,000/- in this Court within two weeks from date. The Learned Counsel for the Respondent No.2 contended that the impugned order has already been given effect to in as much as the Suit has been amended in the year 2011 itself.

The said aspect can be looked into at the time of considering the above Petition for admission. The payment of costs is a condition precedent, if the costs are not deposited as directed by this Order, the benefit of this order would not enure to the Applicant and the application then would be deemed to have been dismissed. If the costs are deposited, the Respondent No.2 would be allowed to withdraw the same and the Petition would be then placed for admission on 12-2-2015, to be shown on the supplementary board.

6 The Civil Application is accordingly disposed of.

[R.M.SAVANT, J]