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IN THE HIGH COURT OF JUDICATURE AT MUMBAI

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 12188 OF 2013

Trimbak Shantaram Bhoir ... Petitioner

Vs.

Shri Mahadeo Dharma Patil and another ... Respondents

Mr.Rahul M.More, Advocate for Petitioner.

Mr.Praveen K.Hushing, Advocate for Respondents.

CORAM : R. G. KETKAR, J.

DATE : 11th JUNE, 2015

P.C. :

. Heard Mr.Rahul M.More, learned Counsel for the petitioner and Mr.Praveen K.Hushing, learned Counsel for the respondents at length. Rule. Mr.Hushing waives service. At the request and by consent of the parties, rule is made returnable forthwith and the petition is taken up for final hearing.

2. By this petition under Article 227 of the Constitution of India, original defendant has challenged the order dated 10/09/2012 passed by the learned Civil Judge, Junior Division, Panvel below Exhibits 23 & 25 in Regular Civil Suit No. 207 of 2012. By that order, the learned trial Judge rejected the applications.

3. In support of this petition, Mr.More submitted that suit summon was issued on 18/11/2009. The petitioner appeared on 16/01/2010. Since he could not file written statement, 'no W.S.'

order was passed on 10/06/2011. On the ground of his ill-health, he could not remain present on 17/08/2011 and take cross examination of respondents. On 17/08/2011, the learned trial Judge passed 'no cross' order. The petitioner, therefore, took out application at Exhibit 23 for setting aside 'no W.S.' order dated 10/06/2011 and application at Exhibit 25 for setting aside 'no cross' order dated 17/08/2011.

4. On 10/09/2012, the petitioner and his advocate were not present. The learned trial Judge rejected the applications on merits by holding that the reason given for condonation of delay was not acceptable. No material was brought on record to substantiate that defendant was unable to move and perform his duties.

5. Having regard to the fact that the applications were dismissed on merits in the absence of the petitioner and his advocate, I deem it appropriate to set aside the order so that applications can be decided on merits after hearing the parties subject to payment of costs of Rs.5,000/- to be paid to the respondents within 2 weeks from today. Payment of costs is condition precedent. Mr.More assures that petitioner will not seek undue adjournment and will proceed to argue the applications at Exhibits 23 & 25 on merits. Assurance given by Mr.More is accepted.

6. In view thereof, the impugned order is set aside and applications at Exhibits 23 & 25 are restored and the same shall be decided on merits subject to payment of costs of Rs.5,000/- to be

paid to the respondents within 2 weeks from today. The petitioner is at liberty to deposit the amount of costs within 2 weeks from today in the trial Court under due intimation to the advocate appearing for the respondents. If deposit is made, respondents will be at liberty to withdraw the same unconditionally. Liberty is reserved to the respondents to apply for expeditious disposal of the suit. If such application is made, the learned trial Judge will pass appropriate order thereon. Rule is made absolute in the aforesaid terms. Petition is disposed of accordingly.

(R. G. KETKAR, J.)