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IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.2406 OF 2014

M/s Orange City Sintex (India) Ltd. Thr. its Ex-Director Vijay Jrishnarao Sontakey
Vs.
Smt. Kamalini Wd/o Bahubali Doshi & Anr.

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Office Notes, Office Memoranda of Coram,
appearances, Court orders or directions
and Registrar's orders
.....

Court's or Judge's Order

Shri Suresh Dhole, Advocate for petitioner.
Shri A. M. Sudame, Advocate for respondent
No.1.

CORAM: A. S. CHANDURKAR J.

DATED: JANUARY 21, 2015.

The challenge in present writ petition is to the order dated 12/11/2013 passed by the trial Court condoning delay in filing application for restoration of the civil suit that was dismissed in default.

The respondent No.1 is the original plaintiff who had filed suit for declaration and possession in respect of agricultural land admeasuring 4.10 hecters. Said suit was filed in the year 2001. This suit came to be dismissed on 21/07/2007 on account of continuous absence of the plaintiff and her counsel. After about 1444 days, application for restoration of said civil suit came to be filed. It was stated that the counsel representing the plaintiff had not informed the plaintiff about the necessity to appear in the

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proceedings. The counsel had also stopped attending the proceedings in the trial Court. After getting knowledge of dismissal of the suit, the application for restoration came to be moved. The application was opposed by the defendant No.2 on the ground that no sufficient cause was assigned for having the delay condoned. It was stated that plaintiff was not diligent in prosecuting the suit. The trial Court by its order dated 12/11/2013, allowed the application for condonation of delay subject to costs of Rs.5000/-. Said order is under challenge in this writ petition.

Shri S. Dhole, learned counsel for the petitioner vehemently argued that in absence of any satisfactory reasons being assigned by the original plaintiff, the delay could not have been condoned. He stated that in the application for condonation of delay, no details were given regarding the name of earlier counsel or the steps taken by the plaintiff in prosecuting the suit. He therefore stated that the trial Court erred in condoning the delay at the behest of respondent No.1. He relied upon the decision of Supreme Court in ***Postmaster General And Others Vs. Living Media India Limited And Another (2012) 3 Supreme Court Cases 563*** in support of his submissions.

Shri A. Sudame, learned counsel for respondent No.1 supported the impugned order. He stated that all necessary details had been mentioned in the application for condonation of delay. On account of lapses on the part of her counsel, the respondent No.1 was not in a position to contest the proceedings. Relying upon the decision of the Supreme Court in ***Rafiq and Another Vs. Munshilal And Another (1981) 2 Supreme Court Cases 788***, it

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was submitted that on account of fault of the counsel, the party could not be made to suffer.

I have considered the aforesaid submissions and I have also gone through the reasons as assigned by the respondent No.1 in the application for condonation of delay. It is stated that the earlier counsel who was representing the respondent No.1 had not kept her informed about progress of the matter. In December 2010, when the original plaintiff visited Nagpur after receiving summons in another case, she got knowledge about dismissal of the suit and hence took necessary steps after obtaining certified copy.

In reply, the defendant No.2 stated that the plaintiff was not diligent. She was represented by her Power of Attorney and hence it was not open for her to blame her counsel.

The trial Court after hearing both the sides, accepted the reasons assigned by the original plaintiff. It noted that the delay was on account of communication gap and there was no allegation of misconduct or negligence. It therefore condoned the delay by awarding costs of Rs.5000/- to the petitioner. It is well settled that if the trial Court has condoned the delay in exercise of its discretion, this Court would not interfere with such decision unless it is demonstrated that the view as taken was an impossible view or the same was perverse. Though it is stated by the learned counsel of the petitioner that the name of earlier counsel was not mentioned in the application for condonation of delay, in absence of any allegation of misconduct being made, same would not make much difference. It is further to be noted that the trial had not commenced in Special Civil Suit No.141 of 2001 so as to blame the original plaintiff for her absence. Moreover, the trial Court has

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awarded substantial costs to compensate the petitioner. Hence, I am not inclined to interfere with the discretion exercised by the trial Court in absence of any jurisdictional error. There is no case made out for interfering with the impugned order. The writ petition is therefore dismissed with no order as to costs.

JUDGE

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