

THE HON'BLE SRI JUSTICE DILIP B.BHOSALE

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CIVIL REVISION PETITION No. 1012 of 2015

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ORDER:

Heard learned counsel for the petitioner.

This C.R.P. is against the order, dated 09.12.2014, passed on I.A.No.909 of 2014 in O.S.No.2202 of 2005. The impugned order reads thus:

“Heard. In view of the condoning of delay of 112 days in preferring the application under Order 9 Rule 13 of C.P.C., this application has been superfluous. However, still there are latches on the part of petitioner-D-3 in preferring this application as such the petition is allowed subject to the condition that petitioner/D-3 depositing 1/4th of decretal amount of Rs.80,337/- to the credit of the E.P. in suit on or before 29.12.2014 in default the petition stands dismissed. Call on 29.12.2014.”

The petitioner is a guarantor. The suit was filed against the principal borrower and the guarantors and it was decreed *ex parte*. For setting aside the *ex parte* decree, the petitioner filed an application under Order 9 Rule 13 of the Code of Civil Procedure and also prayed, by filing another application, for condonation of delay in filing the said application. That application has been allowed subject to the petitioner depositing one-fourth of the decretal amount i.e. Rs.80,337/- to the credit of the execution petition on or before 29.12.2014. Till today, the petitioner has not deposited the said amount and by virtue of the order, dated 09.12.2014, the petition stood dismissed.

Having regard to overall facts and circumstances of the case, I do not find anything wrong with the order passed by the Court below. The condition to deposit the 1/4th amount is necessary in the interest of justice. Moreover, learned counsel for the petitioner is not right in contending that the principal borrower is not made party to the execution petition. That apart, if the petitioner desires to contest the suit on merits, he should deposit the amount as per the

order, dated 09.12.2014, to show his *bona fides*.

In the circumstances, the C.R.P. is dismissed. The time to deposit the amount as per order, dated 09.12.2014, at the request of learned counsel for the petitioner, is extended by six (6) weeks from today. If he deposits the amount within the extended time, the Court below shall proceed with the matter in accordance with law.

Consequently, miscellaneous petitions, if any, also stand disposed of.

DILIP B.BHOSALE,J

Dt:24.04.2015

kdl