

1. The instant appeal is presented, challenging the order passed by the learned Single Judge on 27.1.2012, dismissing the Writ Petition presented by the appellant objecting to the order of

dismissal of Misc. Application No.98/2009 for restoration of earlier Misc. Application No.32/1999 presented by the appellant seeking restoration of the suit, which had been dismissed in default.

2. The respondents 1 and 2 herein presented Special Civil Suit No.103/1991, claiming declaration that the alienations effected by the defendant No.1 Kamlakarrao i.e. father of the original plaintiffs in favour of defendant Nos.2 to 4 i.e. the appellant and others be declared as null and void, and for possession of the suit land. After proper contest, the suit was decreed by the trial Court in view of the judgment and decree passed on 11.2.1994. After declaring the alienations made by the father to the extent of shares of the plaintiffs/ respondents illegal, the trial Court granted liberty to the original defendant Nos.2 to 4 to present the suit for Khas possession of the suit land within a period of six months. The consequences of failure to file the suit as permitted by the trial Court were mentioned in the decree. The appellant presented Regular Civil Suit No.456/1994 claiming Khas possession within the time stipulated in the decree passed by the trial Court.

3. The Regular Civil Suit No.456/1994 was listed for

recording of evidence. However, because of the failure of the appellant to lead evidence, the suit came to be dismissed in default by order dated 17.2.1999. It is observed by the learned trial Judge in the order that, prior to the instant dismissal on 17.2.1999, the suit was dismissed on 4.3.1998 and it was restored to the file. The appellant did not adduce evidence. As such, the suit again came to be dismissed. An application, Misc. Application No.32/1999 for restoration was presented by the appellant. The appellant did not lead evidence in the restoration application. As such, after seven years, the same was also dismissed for want of prosecution on 23.3.2007.

4. A Misc. Application bearing No.98/2009 was presented for restoration of Application No.32/1999. The subsequent application No.98/2009 was barred by limitation as there was delay of more than two years. The reason quoted for the delay was that the lawyer in the appeal Shri S.K. Patil joined the services as Public Prosecutor in 2000 at Chakur and did not pay attention to the proceedings. It is also contended that the economic condition of the appellant is not good and on account of poverty the indulgence should be shown to him.

5. The trial Judge considered the reasons put forth by

the appellant in application. It was noticed by the trial Court that the Advocate representing the appellant was Shri P.T. Dhage and not Shri S.K. Patil. It is also observed by the trial Judge that there is no documentary evidence placed on record to demonstrate that the appellant engaged Shri S.K. Patil in Misc. Application No.32/1999 because of whose negligence the cause of justice was defeated. It was also observed by the trial Judge that Shri S.K. Patil worked as Police Prosecutor since 20.7.2000 to 16.1.2007 whereas the Misc. Application No.32/1999 came to be dismissed on 23.3.2007. It is also observed by the trial Court in the order that the appellant is an Advocate and cannot be said to be ignorant of the procedure. So far as the reason of poverty stated in the application, was also not substantiated and it is observed in the order that the appellant possess sufficient financial resources. It does appear that the trial Judge considered all relevant aspects and proceeded to reject the application with costs of Rs.1000/- to the State.

6. Considering the reasons recorded by the trial Judge, while rejecting application of appellant, which order is confirmed by the learned Single Judge of this Court by order dated 27.1.2012, we do not find that any failure of justice has resulted on account of the adverse order. The appellant is Advocate, who

appears to have protracted the litigation as he is in actual possession of the property in dispute. There is no substance in the Appeal. Letters Patent Appeal stands dismissed.

7. In view of dismissal of the Letters Patent Appeal, Civil Application No.5578/2012 does not survive and same also stands dismissed.

(A.I.S. CHEEMA, J.)

(R.M. BORDE, J.)