

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2225 OF 2015

Republican Samta Seva Mandal Benapur .. Petitioner

vs.

State of Maharashtra & Ors. .. Respondents

Mr.Deepak Pandey for the petitioner

CORAM : K. K. TATED, J.
DATE : AUGUST 9, 2016

PC.:

1 Heard the learned counsel for the petitioner.

2 By this petition under Article 227 of the Constitution of India, the Petitioner plaintiff challenges the order dated 8.11.2014 passed by Civil Judge, Senior Division, Sangli in Civil Misc. Application No.140 of 2013 rejecting plaintiff's application for condonation of delay in filing application for setting aside dismissal order dated 12.10.2012.

3 In the present proceeding, as no one appeared on behalf of the plaintiff in Trial Court on 8.6.2012, 9.8.2012, 23.8.2012, 10.9.2012, 28.9.2012, the Trial Court dismissed the plaintiff's Suit for default by order dated 12.10.2012. Thereafter, plaintiff filed application for restoration on 7.8.2013. There was delay on the part of the plaintiff to make application of 11 months. As the plaintiff failed to disclose

sufficient cause for condonation of delay, the Trial Court passed impugned order dated 8.11.2014. Hence, the present Writ Petition.

4 The learned counsel for the plaintiff submits that in the year 2012 there was drought in Khanapur area. The plaintiff shifted along with his family members to Mumbai. Hence, no one appeared on behalf of plaintiff when the matter was called out before the Trial Court. He submits that for want of instruction, his advocate also remained absent. He submits that these facts were not considered by the court below at the time of deciding their application for condonation of delay for setting aside dismissal order dated 8.10.2012. He submits that the plaintiff has good chance of success in Regular Civil Suit No. 180 of 2008. He submits that if delay is not condoned and matter is not restored on file, irreparable loss will be caused to the plaintiff. He submits that in the interest of Justice, this Hon'ble Court be pleased to allow the present Writ Petition by setting aside the impugned order dated 8.11.2014 passed by Civil Judge, Senior Division, Sangli and condone the delay in filing application for setting aside the dismissal order dated 12.10.2012.

5 I have heard the learned counsel for the plaintiff at length. It is to be noted that when the matter was called out before the Trial Court on 8.6.2012, 9.8.2012, 23.8.2012, 10.9.2012, 28.9.2012 neither plaintiff nor his advocate was present. In the application for condonation of delay, plaintiff has not explained and or giving any reason why his advocate was not present in court when the matter was called out on several occasions. The reason given by the plaintiff in his application that he shifted to Mumbai cannot be considered for condonation of inordinate delay in filing application.

6 Considering these facts, I do not find any reason to interfere with the well reasoned order dated 8.11.2014 passed by Trial Court in Civil Misc. Application No.140 of 2013. Hence, Writ Petition stands rejected.

JUDGE