

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1214 OF 2016

Smt. Manik Suryakant Vadhavkar .Petitioner

Vs.

The Deputy Collector & ors. .Respondents

Mr.U.V.Mohite, Advocate, for the Petitioner
Mr.S.Agrawal, Advocate, for the Respondent No.2
Mr.V.V.Gangurde, APP, for the Respondent No.3 –
State

CORAM : REVATI MOHITE DERE, J.

DATE : 25.08.2016

P.C.

. Heard learned counsel for the
Petitioner, learned counsel for the Respondent
No.2 and the learned APP for the Respondent No.3
– State.

2. Rule. Rule is made returnable
forthwith.

3. By consent, the matter is taken up for
final hearing.

4. By this Petition, the Petitioner seeks quashing and setting aside of the impugned Order dated 24.02.2016 passed by the learned Spl. Judge MPID & Addl. Sessions Judge and prays that M.A.No.246 of 2015 filed by the Petitioner in the Special Court (MPID) be restored to file and be heard on its own merits.

5. Learned counsel for the Petitioner states that the Petitioner is aged 88 years and was being represented by a Lawyer before the Special Judge. He submits that the learned Advocate appearing for the Petitioner was present on the previous date i.e. 25.01.2016 and as such the observation of the learned Judge that the Petitioner was not present for the last four dates either in person or through her Advocate is incorrect. He submits on the instructions of the Petitioner, that the Advocate for the Petitioner will remain present on every date of the hearing of M.A.No.246 of 2015 filed in Special Case No.5 of 2001 and will

co-operate with the trial Court.

6. Learned APP has no objection, if the said Order dated 24.02.2016 is quashed and set aside in the interest of justice, in view of the statement made by the learned counsel for the Petitioner.

7. Perused the papers. Vide Order dated 24.02.2016, the learned Special Judge (MPID) was pleased to dismiss the Petitioner's Application in default for want of prosecution. It was observed that for the last four dates, neither the Petitioner nor her Advocate were present. It appears from a perusal of the roznama that no doubt the Petitioner and her Advocate were absent on a few dates, however, on the previous date i.e. 25.01.2016 the Petitioner's Advocate was present. It appears that the learned Judge was left with no option but to pass the impugned order, for failure of the Petitioner and her Advocate to proceed with the hearing of the

M.A.No.246 of 2015 filed by her. No fault can be found in the said order. However, only by way of indulgence and in the interest of justice, keeping in mind the age of the Petitioner and the statement made by the learned counsel for the Petitioner, on the instructions of the Petitioner that her Lawyer will appear on every date of the proceedings and will not seek any adjournment, that the Petition is being allowed.

8. Accordingly, the impugned Order dated 24.02.2016 passed by the learned Special Judge (MPID) by which the Petitioner's Application, being M.A.No.246 of 2015 was dismissed for want of prosecution is quashed & set aside. M.A.No.246 of 2015 filed by the Petitioner in Special Case No.5 of 2001 is restored back to its original file. The learned Special Judge (MPID) to decide the said M.A.No.246 of 2015 on its own merits, in accordance with law.

9. Accordingly, the Petition is disposed of. Rule is made absolute on the aforesaid terms.

10. It is made clear, that this Petition has not been considered on merits.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)