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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION***

APPEAL FROM ORDER NO. 1289 OF 2013

Shashikant Bhiwaji Mane and Anr.

... Appellants.

V/s.

Ilahi Usman Momin and Ors.

... Respondents.

Mr. Rahul Kulkarni for the Appellants.

None for the Respondents.

CORAM : N.M. Jamdar, J.

03 August, 2016.

Oral Order :-

By order dated 5 February 2014, a notice for final disposal was issued in this Appeal. The Registry has placed the matter on board as all the Respondents are served.

2. During the course of earlier hearing a query was put to the learned Counsel for the Appellants that since the Appeal was dismissed by the learned Judge on the ground of fault of the Advocate, whether the Advocate has at least tendered apology to the

Court. After taking time on few occasions, the learned Counsel for the Appellants informed that the concerned Advocate is not willing.

A detailed order was passed on 30 June 2016 as under :-

“The Miscellaneous Civil Application taken out for the restoration was dismissed by the learned District Judge, Jaysingpur which is challenged in the present Appeal from Order. The learned District Judge had recorded that the Advocate for the Applicant, who was to argue the matter did not remain present on various dates ranging from 9.3.2006, 13.4.2006, 15.6.2006, 17.8.2006, 9.11.2006, 29.11.2006 and 18.1.2007. The learned District Judge took note of gross negligence of this nature and refused to exercise jurisdiction to condone the delay and restore the Appeal.

2. Perusal of the impugned order and the Roznama clearly shows that there were repeated adjournment on the part of the Advocate for the Appellant. The argument that was advanced that because of the fault of the Advocate, litigants should not suffer which submission may be considered, but it cannot be lost sight that the Advocate also has his duty to attend to the matter when the matter is called. In the present case series of adjournments have been taken and therefore there was not option left before the learned District Judge but to dismiss the matter. Least that is expected that the Advocate to apologize for his absence. Quite often this Court restores the matter when the Advocates tender sincere apology for their absence. The learned

Counsel for the Appellant will convey this observation to the concerned Advocate. Stand over to 20 July 2016.”

3. Mr. P.S. Dani, learned Senior Advocate has appeared on behalf of the concerned Advocate. He tenders an unconditional apology on behalf of the Advocate. Mr. Dani has placed on record an affidavit sworn by the concerned Advocate which is filed in the District Court, Jaysingpur. Copy of the affidavit is taken on record.

4. Such practices of seeking needless adjournments and not arguing the matters on the listed dates have resulted in chronic backlog, in almost all Courts. This in turn affects the litigants as well as the members of the Bar themselves in the long run. The Advocates owe a duty to the Court to ensure that the backlog is cleared. In this case the learned District Judge was left with no choice but to dismiss the Appeal, since the concerned Advocate refused to argue the matter on various dates. Now since the unconditional apology has been tendered on affidavit to the District Court, it is expected that the gravity of the conduct has been realized by the concerned Advocate and the other members of the Bar in the District Court. Mr Dani also assures that in future all possible care would be taken.

5. The learned District Judge had passed the order

primarily on the ground that the Advocate did not argue the matter. The conduct of the concerned Advocate is not appreciated, but since the Advocate has now tendered an unconditional apology, in my opinion, an opportunity be given to the Appellants, who are without any fault, to address the Appeal on merits. The Respondents have not put in their appearances even though served.

6. Accordingly, the Appeal from Order is allowed. The impugned order dated 17 January 2013 is quashed and set aside. Regular Civil Appeal No. 171 of 2004 stands restored to file, to be disposed of by the learned District Judge, Jaysingpur on its own merits.

(N.M. Jamdar, J.)