

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****APPEAL FROM ORDER NO.801 OF 2016****ALONGWITH****CIVIL APPLICATION NO.1003 OF 2016****IN****APPEAL FROM ORDER NO.801 OF 2016****Mrs.Pushpa Shankar Satpute****..... Appellant****VERSUS****Dinkar Kallappa Kamble,
since deceased through legal heirs & Ors.****..... Respondents**

Mr.Surel Shah for the Appellant.

Mr.P.R.Suayavanshi, i/b. Mr.Gajanan Savagave for Respondent nos. 2 to 5.

CORAM : R.D. DHANUKA, J.**DATE : 24th AUGUST, 2016****P.C.**

By this appeal from order, the appellant has impugned the order passed by the learned Additional District Judge, rejecting the application dated 25th February, 2015 filed by the appellant inter alia praying for restoration of the Regular Civil Appeal No.51 of 2007 which was dismissed for default.

2. Mr.Shah, learned counsel for the appellant invited my attention to the Roznama in Regular Civil Appeal No.51 of 2007 and the application made for restoration by the appellant before the learned Additional District Judge inter alia praying for the restoration of the Regular Civil Appeal No.51 of 2007. He submits that the appellant himself was present when the matter was called out by the learned Judge. The learned advocate representing the appellant had gone to the

typist for getting the application under the provisions of Order 41 Rule 27 of the Code of Civil Procedure, 1908 typed and could not remain present. He submits that the application for restoration of appeal was made by the appellant however the same is dismissed. He submits that the appellant will not ask for any unnecessary adjournment before the learned District Judge if the appeal is restored by this court.

3. Learned counsel for the respondents on the other hand submits that the appellant was absent even on the earlier occasion before the learned Additional District Judge. The learned Additional District Judge was thus justified in dismissing the appeal filed by the appellant for default.

4. A perusal of the Roznama in the Regular Civil Appeal No.51 of 2007 indicates that the appellant was present when the matter was called out. I am inclined to accept the case of the appellant that his advocate had gone to get the application typed which he wanted to make under provisions of Order 41 Rule 27 of the Code of Civil Procedure, 1908. The assurance given by the learned counsel for the appellant that his client would not seek any unnecessary adjournment before the Additional District Judge is accepted.

5. In my view, the interest of justice would be met with if the appellant is directed to pay cost of Rs.5,000/- to the respondents within two weeks from today as and by way of condition precedent for restoration of the Regular Civil Appeal No.51 of 2007.

6. Mr.Shah learned counsel appearing for the appellant submits that though by an order dated 15th June, 2016 passed by this court, civil application was adjourned

to 1st July, 2016 and this court had directed the learned Civil Judge, Senior Judge, Jaisingpur to grant suitable adjournment in the suit which order was continued by this court vide order dated 1st July, 2016 adjourning the matter to 3rd August, 2016, the learned Civil Judge, Senior Division, Jaisingpur has passed an order thereby closing the cross examination of the witness examined by the plaintiff, to be conducted by the defendants.

7. In view of the fact that the impugned order passed by the learned District Judge dismissing the application for restoration of the Regular Civil Appeal No.51 of 2007 is set aside, the appellant would be at liberty to challenge the fresh order passed by the learned Civil Judge, Senior Division, Jaisingpur by filing appropriate proceedings. I, therefore pass the following order :-

(a) The impugned order dated 25th February, 2014 passed by the learned District Judge, Jaisingpur is set aside. The application filed by the appellant for restoration of the Regular Civil Appeal No.51 of 2007 is allowed.

(b) Regular Civil Appeal No.51 of 2007 is restored to file on the condition that the appellant pays the cost of Rs.5,000/- to the respondents within two weeks from today as condition precedent.

(c) The appellant shall not apply for any unnecessary adjournment before the learned District Judge and shall proceed with the matter as and when the matter is on board before the learned judge.

(d) The learned District Judge, Jaisingpur shall make an endeavour to dispose of the regular civil appeal expeditiously

and not later than six months from the date of communication of this order.

(e) The appellant would be at liberty to file appropriate proceedings against the order passed by the learned Civil judge, Senior Division, Jaisingpur. It is made clear that such proceedings if any, shall be filed by the appellant within two weeks from today. For a period of four weeks from today, the learned Civil Judge, Senior Division, Jaisingpur shall not be proceeded with the hearing of the Regular Civil Suit No. 188 of 2012.

(f) The learned Additional District Judge shall dispose of the application under Order 41 Rule 27 of the Code of Civil Procedure, 1908 if any filed by the appellant within two weeks from today expeditiously before passing any further orders on the main appeal.

8. The Appeal from Order No.801 of 2015 alongwith Civil Application No.1003 of 2016 is disposed of in the aforesaid terms.

9. The parties as well as the learned District Judge and the learned trial judge to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]