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

WRIT PETITION NO. 11359 OF 2012

Mr. Hanumant Ramchandra Belose. ... Petitioner.

V/s.

Mr. Dattatraye Maruti Patil and Ors. ... Respondents.

Mr. S.V. Gavand for the Petitioner.

Mr. U.B. Konde Deshmukh a/w. Prashant Patil for Respondents 1, 2 to 5.

CORAM : N.M. Jamdar, J.

26 September, 2016.s

Oral Order :-

By order dated 15 April 2013 notice was issued to the Respondents putting the Respondents to notice that the Petition may be heard and disposed of finally at the stage of admission and further proceedings in the Suit were stayed. The Respondents are served. The learned Counsel appears for Respondent Nos. 1 and 2 to 5.

2. The Respondents – Plaintiffs filed a Special Civil Suit No.12 of 2011 in the Court of Civil Judge, Senior Division, Alibag, seeking specific performance of the agreement dated 16 March 2007. The Suit was instituted on 15 January 2011. On 17 July 2011 an

order was passed by the learned Civil Judge that the Petitioner has failed to file written statement, hence the Suit to proceed without the written statement of the Petitioner. Thereafter, an application was made by the Petitioner for setting aside the order of 'No W.S'. This application was rejected by the impugned order dated 5 October 2012.

3. Heard the learned Counsel for the parties.

4. In the application for condonation of delay and for setting aside the No W.S. order, the Petitioner has contended that the written statement could not be filed because of the medical condition of the Petitioner. The Petitioner had placed on record medical certificates as regarding his illness. The learned Civil Judge, in the impugned order, has referred to the medical certificates and has observed that the Petitioner was admitted to the hospital for few days in May 2012 and therefore, nothing has been shown by the Petitioner as regard the remainders of the period. The learned Counsel for the Petitioner submitted that for the remainders of the period, there were other medical certificates which are not being considered at all. The learned Counsel for the Respondents supported the impugned order and prayed for dismissal of the Writ Petition.

5. The fact that the Petitioner was unwell is made out by the medical certificates, which is not also disbelieved by the learned

Civil Judge. The learned Civil Judge was right in observing that the medical certificates do not cover the entire period but the fact that the Petitioner was unwell has not been discredited. If that explanation is accepted and all the medical certificates are considered, then the period of delay is not unduly long. For this period the learned Civil Judge could have imposed appropriate cost to balance equities. The learned Civil Judge has not considered the option of imposing of cost at all which is one of the methods by which equities can be balanced in such cases. The Petitioner is stated to be a Power of Attorney, who according to the Respondent – Plaintiff sold the property belonging to Defendant Nos. 1 to 4. Consideration is stated to be Rs.6.00 lakhs. Going by this case of the Respondent – Plaintiff, I am of the opinion that the cost of Rs.25,000/- would be appropriate in the facts of the present case.

6. Accordingly, the Writ Petition is allowed in terms of prayer clause (b), subject to the Petitioner paying cost of Rs.25,000/- (in total) to the Respondent – Plaintiff within period of four weeks from today. After the costs are so paid, the Petitioner will file written statement within period of three weeks. If costs are not paid and written statement is not filed within stipulated period, then the order impugned in this Petition will stand restored. The Writ Petition is disposed of in the above terms.

(N.M. Jamdar, J.)