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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.3620 OF 2017

Jaishri @ Sangita w/o Apparao Gaikwad
Age - 45 years, Occ - Household
R/o Bodka, Taluka - Latur
District - Latur

PETITIONER

VERSUS

Poonam d/o Apparao Gaikwad
Age Minor u/g her Grand Father,
Bankat s/o Tukaram Gaikwad
Age - 68 years, Occ - Labour
R/o Sindgaon, Taluka - Renapur
District - Latur

RESPONDENT

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Mr. N. D. Kendre, Advocate for the petitioner
Mr. D. B. Pawar, Advocate for the respondent

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 9th JUNE, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard finally by consent of learned advocates for the parties.
2. Petitioner is defendant in Regular Civil Suit No. 290 of 2008 (Old No.638 of 2007) filed by respondent – plaintiff seeking declaration against petitioner that she being not step mother of plaintiff - present respondent. The suit was decreed, against which the petitioner has preferred Regular Civil Appeal No. 41 of

2012. The petitioner claims to be an elderly lady and had to bear a lot of responsibilities including of her maternal side. Her mother has been ailing and is being required to be frequently hospitalized. Since 2012, after filing of appeal, she had been kept engaged in attending to her mother and additionally her daughter had met with an accident and she too was required hospitalization and nursing care. Learned advocate through whom appeal came to be filed had assured that he would take care and keep her informed about further developments in the matter. However, in September, 2013, the appeal came to be dismissed in default for non appearance of the petitioner and her advocate. This fact was neither intimated nor noticed by the petitioner and she had been under the impression that the appeal is pending. In the meanwhile there had been some action on behalf of the respondent trying to dispel her claim before the court, upon which on inquiry, it was realized that the appeal filed by her had been dismissed in September, 2013. It was thereafter, an application for restoration of the appeal along with delay condonation application had been moved. The delay caused is about 965 days. The delay has been accordingly explained along with requisite documents. Appellate court, however, has according to learned advocate, went about the

matter pedantically without taking into account actual practical difficulties faced by the petitioner.

3. Learned advocate submits that the petitioner is an old lady not versed in the litigation and the implications of the statements as would be extracted from her and technical construction has been placed on the same and the application has resulted into failure.

4. Mr. Kendre, learned advocate submits that it is easily discernible that there is absolutely no intention in causing delay. The delay has been caused under the circumstances referred to above, which are genuine. It cannot be said in the present case that the petitioner has been benefited by causing delay. In the circumstances, it was incumbent that the court ought to have given anxious consideration to the attending circumstances and particularly that there was absolutely no intention in causing delay.

5. On the other hand Mr. Pawar, learned advocate appearing on behalf of the respondent contends that the restoration application has been moved only after the respondent had moved high court and the petitioner had sat tight on the dismissal in default for long period over three years without any

reason. There is no justifiable reason given in the application explaining delay. He submits that appellate judge has rightly considered that the sufferings by the mother and daughter of the petitioner are not such and can be said that it required continuous attention and further that it has been elicited in the evidence that petitioner is not staying at Bodka but at Latur. In the circumstances, decision given by the appellate court rejecting application for condonation of delay is not required to be interfered with.

6. Looking at aforesaid, it emerges that petitioner is an old lady. Her responsibilities of maintaining her ailing mother and looking after her daughter who had met with accident are to be borne by her. It does not appear to be the case that such responsibilities were being shared by anyone else. Nor it appears that the contentions on behalf of the petitioner that her mother is ailing and requires frequent hospitalization are not dispelled by any material. It is submitted that documents in respect of petitioner's mother's hospitalization and care have been placed on record.

7. In the circumstances, a wholesome approach in the matter would have to be given shunning a pedantic or rather technical

approach keeping at the back of mind guidelines as would be appearing in the decisions of the Supreme Court in the cases of "*Collector, Land Acquisition, Anantnag V/s. Ms. Katiji and others*" reported in *AIR 1987 SC 1353* and "*Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others*" reported in (2013) 12 *Supreme Court Cases* 649.

8. It appears to be a fit case wherein those guidelines deserve to be taken into consideration and the circumstances be treated accordingly. Inconvenience caused to the other side i.e. the respondent in the process can be met with and mended by awarding costs.

9. In the circumstances, impugned order dated 6th February, 2017 passed by District Judge – 4, Latur on Exhibit-1 in Miscellaneous Civil Application No.114 of 2016 stands set aside and application Exhibit-1 and Miscellaneous Civil Application No.114 of 2016 stand allowed subject to payment of costs of Rs.7500/- to be paid to the respondent. Amount of cost be deposited with the appellate court within a period of four weeks from today. Payment of cost is a condition precedent for onward prosecution of the matter. Upon depositing of cost, appeal be proceeded with as expeditiously as possible and be disposed of preferably within a period of four months from the date of

receipt of writ of this order.

10. Writ petition, as such, stands allowed and rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]

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