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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5595 OF 2015

Balaji s/o Shivdas Pawar
Sole Proprietor of B. S. Pawar
(Engineers & Contractors)
Age – 47 years, Occ – Contractorship
Office and Residence at, 4 Siddhant Arcade
Ganesh Nagar, Old AUSA Road,
Latur, District - Latur

PETITIONER

VERSUS

1. The State of Maharashtra
Through its Secretary,
Public Works Department,
Mantralaya, Mumbai – 32
2. The Chief Engineer,
Public Work Region,
Bandhakam Bhavan,
Adalat Road, Aurangabad
3. The Superintending Engineer,
Public Works Circle,
Bandhakam Bhavan,
Osmanabad, District – Osmanabad
4. The Executive Engineer,
Construction Division,
P. W. D. Campus, Osmanabad
District – Osmanabad

RESPONDENTS

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Mr. J. N. Singh, Advocate for the petitioner
Mr. S. N. Kendre, AGP for respondent - State

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 19th JUNE, 2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by consent.

2. Petitioner is plaintiff in Regular Civil Suit No.15 of 2013 instituted for recovery of amount. While upon service of summons, respondents did not appear, the matter proceeded further with an order "*matter to proceed without written statement against defendants*" around 2013.

3. Petitioner, on 14th December, 2013 lodged examination in chief on affidavit. On 1st January, 2014, notice was given to defendants for production of documents and even the court issued notice to defendant No. 4 to produce documents as demanded by the plaintiff. Accordingly, defendants had produced certain documents on 15th January, 2014. Matter was posted for evidence on 14th February, 2014 and thereafter on 24th February, 2014 and 6th March, 2014. While on 15th March, 2014 an application to set aside no written statement order came to be filed on behalf of the defendants, court has framed issues under Exhibit-27 and matter was kept for list of witnesses. However, despite examination in chief on affidavit being on record, court had directed on 21st March, 2014 to close

plaintiff's evidence. On 3rd April, 2014, it was posted for dismissal of suit in default. On 7th April, 2014, the suit came to be dismissed in default. This was not noticed by the plaintiff for quite a while, as there had been neither communication to that effect nor any intimation was given by concerned advocate who prosecuted the matter. In the circumstances, while the petitioner realized that suit stood dismissed in default under order dated 7th April, 2014, immediately, an application had been moved for setting aside dismissal in default order referring to aforesaid reasons under MARJE No. 209 of 2014. Said application came to be rejected and thus this writ petition.

4. Learned AGP appearing on behalf of the respondents submits that advocate for the plaintiff had been absent from 30th January, 2014 to 3rd April, 2014 as well as plaintiff had not been present and therefore, court had rightly rejected the application.

5. Perusal of the order impugned shows that although narration of the reasons given in the application has been referred to in the order, while deciding the application on merits, there is no reference to that the advocate had not given intimation about dismissal in default order and the court has observed that there is no reason given in affidavit filed for delay

condonation application.

6. Learned advocate for the petitioner purports to contend that very application has been given on affidavit under evidence. In the circumstances, keeping in view the guidelines, appearing under the judgments of the Supreme Court particularly those in the case of "*Collector, Land Acquisition, Anantnag V/s. Ms. Katiji and others*" reported in *AIR 1987 SC 1353*, and in the case of "*Esha Bhattacharjee V/s. Managing Committee of Raghunathpur Nafar Academy and others*" reported in *(2013) 12 Supreme Court Cases 649*" while delay cannot be said to be deliberate and particularly having regard to the nature of suit and proximity of dates in the suit, impugned order dated 3rd February, 2015 on MARJE No.209 of 2014 passed by 2nd Joint Civil Judge, Senior Division, Osmanabad stands set aside. MARJE No.209 of 2014 stands granted. Matter to proceed accordingly.

7. Writ petition as such, stands allowed. Rule is made absolute in aforesaid terms with no order as to costs.

[SUNIL P. DESHMUKH, J.]