

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.11914 OF 2015
(Vilas Baliram Koli Vs.Kadu Lahanu Koli, through legal heirs and others)

Mr.P.P.Dhorde, learned counsel for the petitioner.
Mr.Chaitali Kutti Choudhary, learned counsel for respondent Nos. 1,3, and 4.
Respondent No.2 served.

(CORAM : M.S.Sanklecha, J.)

DATE : 10/04/2017

PER COURT :

1. This petition under Article 227 of the Constitution of India, challenges the order dated 26/11/2015 passed by the Principal District Judge, Jalgaon. By the impugned order, the petitioner's application for restoration of his appeal was dismissed.

2. The impugned order, while dismissing the application for restoration of appeal, records the fact that the appeal was dismissed on 02/12/2014 for non-appearance. The reasons stated in the application for non-appearance was the ill-health of the petitioner. In support of his application, the petitioner had filed medical reports of 17/08/201, 08/10/2011 and 23/01/2014, while the appeal was dismissed on 02/12/2014. Thus the impugned order did not find the

reasons/evidence in support of non-appearance credible.

3. Further, the impugned order also records that the petitioner had earlier challenged the order dated 07/07/2011 of the Court rejecting the petitioner's application seeking amendment in the written statement by filing Writ Petition No.6259/2011 in this Court. The above writ petition was dismissed by this Court on 06/02/2012. Thereafter, the petitioner filed on 12/02/2013 an application before the Court seeking to file an additional written statement on grounds which were akin to those raised in the earlier application for amendment. The said application was also rejected by an order dated 25/09/2013 of the Court. The petitioner challenged the order dated 25/09/2013 by filing a second Writ Petition bearing WP No.2301/2014. This Court, on 26/09/2014, dismissed the second writ petition by imposing costs of Rs.10,000/- on the petitioner and directed him to deposit it within 4 (Four) weeks from the date of the order. The petitioner did not deposit the costs, as directed nor filed an application to have the time extended. By the impugned order, the petitioner's application for restoration was rejected after recording the aforesaid facts and also not being satisfied with the petitioner's contention that he was unable to prosecute his appeal in view of ill health on account of lack of evidence to support the same.

4. Mr.Dhorde, learned counsel appearing for the petitioner, invites my attention to the decision of this Court in Annasaheb Virupaksha Bidre Vs.Dada Tatoba Patil and others [2005(2) Mh.L.J.221], wherein this Court has ordered restoration of the appeal, which has been dismissed for absence of the Advocate and the party on the date of hearing. Mr.Dhorde relies upon the aforesaid decision to contend that the appeal be restored and he be given an opportunity to prosecute the appeal on merits.

4. The decision relied upon by Mr.Dhorde in Annasaheb Bidre (supra) is completely distinguishable to the facts of the present case. In this case, the reasons set out for non-appearance of the petitioner in the application for restoration were found not credible. This was not a case where the appeal was dismissed for non-appearance of an Advocate. In this case, it is the petitioner's case that because of his ill health, he could not brief his Advocate and also not remained present in Court. Thus the dismissal in this case is not on account of negligence or inaction on the part of the Advocate. Moreover, the impugned order has considered the reasons for non-appearance on the date the appeal was dismissed and found the same to be non-satisfactory. This finding cannot be said to be perverse. Further the impugned order also records the earlier conduct of the petitioner

and failure to honour the directions of this Court to deposit Rs.10,000/- in the Appeal Court all of which indicate an attempt to delay the appeal proceedings.

5. Further the jurisdiction under Article 227 of the Constitution of India is a supervisory jurisdiction and is to be exercised to ensure that the Courts and the quasi-judicial Authorities within the State of Maharashtra act within the boundaries of Law. In this case, the impugned order indicates that the jurisdiction was properly exercised and the decision is duly supported by reasons on consideration of the evidence. The view taken is a possible view and would not warrant any interference under Article 227 of the Constitution of India.

6. In the above view, the petition is dismissed. Interim relief, if any granted during the pendency of this petition, also stands vacated.

7. At this stage, Mr.Dhorde seeks stay to the present order. Application to stay this order is rejected.

(M.S.Sanklecha, J.)