

Anand

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

WRIT PETITION NO.1175 OF 2017

Musa Ahmed Hakim

.Petitioner

Vs.

Sandip Subhash Naikare

.Respondent

Mr.U.B.Nighot, Advocate, for the Petitioner

CORAM : R.G.KETKAR, J.

DATE : 08.03.2017

P.C.

. Not on board. At the request of Mr. Nighot, taken up for admission.

2. Heard Mr. Nighot, learned counsel for the Petitioner.

3. By this Petition under Article 227 of the constitution of India, the Petitioner, hereinafter referred to as 'Defendant' has challenged the Judgment and Order dated 03.12.2016 passed by the learned 3rd Jt.C.J.J.D. & JMFC, Khed, Pune below Exh.32 in R.C.S.No.29 of 2011. By that order, the learned trial Judge rejected the Application made by the Defendant for setting aside No W.S. order

dated 23.02.2012 passed against him.

4. In support of this Petition, Mr. Nighot has taken me through the Application made by the Defendant for condoning the delay in the filing the Application for setting aside No W.S. order. He submitted that parties were trying to settle the controversy. Financial condition of the Defendant was also weak. Revenue proceedings were going on between the parties and therefore, he could not file W.S. in time. After passing of No W.S. order, No Cross Order was also passed against him. He submitted that as he was shifted to Solapur and doing some work there, he was not available and cannot file W.S. He submitted that for more than two years, roznama of the suit was also not maintained by the trial Court. Roznama was maintained upto 18.06.2012 and thereafter, roznama was maintained from 15.02.2014. In other words, between 18.06.2012 and 15.07.2014, no roznama was maintained.

5. I have considered the submissions advanced by Mr. Nighot. I have also perused the material on record. It is not in dispute that the Defendant was duly served with the summons vide Exh.10. He appeared through his Advocate on 10.02.2011. No W.S. order was passed against him on 23.02.2012. This was followed by No Cross Order against the

Defendant. In paragraph 5, the learned trial Judge observed that before filing the present Application, suit was posted for ex-parte Judgment. For the reasons recorded in paragraph 5 of the impugned Order, I do not find any fault with the impugned Order. The learned trial Judge observed that nearly after five years, the Defendant has filed this Application. Having regard to the stage of the proceedings, no case is made out for invocation of powers under Article 227 of the Constitution of India. Petition fails and the same is dismissed.

6. However, it is made clear that where a decree is challenged by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of the proceedings as contemplated by Section 105(1) of C.P.C.

(R.G.KETKAR, J.)