

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

WRIT PETITION NO.11954 OF 2015

Mr. Nilesh Vijay Bhosale

...Petitioner

vs.

Mr.Sanjay M. Rawal

...Respondent

Mr. Parag V. Dube for the Petitioner.

Mr. Nandu V. Pawar for Respondent No.1.

CORAM : SMT. SADHANA S. JADHAV, J.

DATE : 29th November, 2017

P.C.:

. Heard. Rule. Rule is made returnable forthwith with the consent of the parties.

2. The Petitioner herein was the Plaintiff in Special Civil Suit No.486/2005. During the pendency of the suit, the defendant had filed a counter claim seeking to recover amount of Rs.2,14,000/- The Plaintiff had filed Misc. Civil Application No.610/2010 seeking condonation of delay to the extent of 1 year, 7 months and 16 days in challenging the judgment and order passed in Special Civil Suit No.486/2005 by Civil Judge, Senior Division, Pune. The said application is rejected vide order dated 14/2/2014. Hence this writ petition.

3. It is the contention of the learned counsel for the Petitioner that during pendency of the suit the parties were exploring possibility of amicable settlement. That the Petitioner had relied upon the word of the Defendant and have almost abandoned the suit. However, thereafter since he had not given any instructions to the advocate representing the

Petitioner, the advocate had filed 'No instructions' pursis. Thereafter the Defendant had prosecuted his counter claim of Rs.2,14,000/- and had succeeded. It is true that the Petitioner had received a notice from the Court. However, the Respondent herein had submitted that he had also received a notice but since there is possibility of amicable settlement they need not attend the matter. It is in view of this that the Petitioner had not prosecuted the suit and could not file the appeal within the stipulated time.

4. Learned counsel for the Petitioner submits that he has been the victim of fraud played by the Defendant and that he imposed trust in the Defendant. The Court has considered the evidence affidavit filed in support of the application. The Petitioner was cross examined by the Respondent and he had admitted that after filing pursis by his advocate he had received notice from the Court and even then he could not prosecute the suit since he had been deceived by the Defendant for a very long time..

5. Learned counsel for the Petitioner submits that he reserves a right to prosecute the appeal challenging the judgment and order which is passed ex-parte against him and contest the counter claim also.

6. In view of this in the interest of justice the order dated 14/2/2014 deserves to be quashed and set aside. Appeal be registered subject to the condition that the Petitioner deposits cost of Rs.15,000/- within 6 weeks from today. Rule is made absolute subject to the Petitioner depositing cost in the Trial Court.

(SADHANA S. JADHAV, J.)