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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9147 OF 2015

Abdul Karim Khatal Gudkatti ...Petitioner

vs

M/s. Laxmi Foundry ...Respondent

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Mr. S.G. Kudle, for the Petitioner.

Mr. Kiran Bapat, i/b. M/s. Desai & Desai Associates, for the Respondent.

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CORAM : PRASANNA B. VARALE, J.

DATED: 13 SEPTEMBER, 2017

P.C.:

. Heard learned Counsel for the Petitioner at length.

2. Though it is an attempt for the Petitioner to submit that for no fault of the Petitioner, the Petitioner is put to prejudice, the perusal of the record states an unfortunate and sorry state of affairs. The Petitioner filed an appeal, namely, Complaint (ULP) No.68 of 2003. The complaint was filed on 27 August 2003 and on 11 September 2003. The copy of the roznama placed on record by the Petitioner himself shows that the complaint was pending before the learned Court below for considerable time, i.e. for nearly 7 long years, i.e. till 2010. The perusal of the roznama least to say that reflects that the Counsel representing the Petitioner was absent on most of the occasions and the matter was adjourned most of the times. On certain occasions, the Court even

recorded that the matter is pretty old and pending for evidence. The perusal of the roznama further shows that on 26 April 2010, the Counsel for the complainant though was duly served, remained absent. The matter was called out again at 12.20 p.m. Even on the Second call, the Counsel was absent. The matter was then posted at 1.30 p.m. and 3.30 p.m. and for non-availability of the Counsel, the matter was again adjourned. On 3 May 2010, the learned Member of the Industrial Court recording reasons again adjourned the matter. It would be useful to refer to the observations of the learned Member of the Industrial Court, while adjourning the matter. On that date, the matter was called out on two occasions, and on both the calls, the Counsel representing the complainant/Petitioner was absent. The Court then observed that, on 23 March 2010, application was submitted seeking an adjournment on the ground that the complainant is lodged in jail and the Counsel would require some time for approaching the jail authorities and seeking instructions from the complainant to prosecute the complaint. On the request made by the Counsel, the matter was adjourned till 3 May 2010. On that date, none appeared for the complainant, and again the matter was adjourned on 8 June 2010. It seems that the matter was again adjourned on 8 June 2010, as the order was passed on 30 August 2010. Perusal of the order dated 30 August 2010 shows that learned Counsel submitted before the Court that he could not receive any instructions from the complainant, as the complainant was serving life imprisonment at Yerwada jail, and the family members of the complainant were not co-operating the Counsel. The Counsel then stated before the Court that the Counsel "has withdrawn his vakalatnama". Learned Member considered the statement of the Counsel left with no choice to dismiss the complaint

for want of prosecution, as the complaint was pending before the Court for more than 7 years. Interestingly enough, on 21 August 2012, learned Counsel, who was representing the complainant submitted before the Court on 30 August 2010 that there are no instructions from the complainant and he has withdrawn his vakalatnama, submitted an application seeking restoration of the complaint with a prayer for condonation of delay caused in filing the restoration application. For supporting the delay, an affidavit was filed by the complainant, making an attempt to explain the delay. Learned Member of the Industrial Court passed an order on the application on 2 July 2013. Learned Member of the Industrial Court, firstly, gave the details of the sequence of events as to how various opportunities were granted to the Counsel, who was representing the complainant and in spite of such opportunity is granted, the Counsel failed to co-operate the Court, and ultimately sought discharge submitting that he has withdrawn his vakalatnama. Then the Court also considered the aspect of delay caused in restoration application. The perusal of order clearly shows that even on the aspect of delay, the Petitioner/complainant utterly failed to show any bonafide reasons for an inordinate delay caused in filing restoration application. The delay to file the restoration application was of 637 days. It will not be out of place to mention that the learned Member of the Industrial Court even gave the allowance for the period for which the complainant/Petitioner was lodged in jail. Learned Member then considered rest of the period of 136 days of the delay caused in filing restoration application. Learned Member then by referring to the affidavit of the Petitioner/complainant observed that, except making a phone call to the Counsel, the complainant took no steps to approach the

Court and this was certainly not a bonafide reason so as to condone an inordinate delay. Thus, the learned Member in a detailed order by giving the reasons rejected the application. Considering all these aspects, I am unable to accept the submission of the learned Counsel that for no fault of the Petitioner, the Petitioner was put to prejudice. On the contrary, the material placed on record and referred to above clearly shows that initially the Counsel, who on various occasions failed to appear before the Court, took a stand that he has withdrawn his vakalatnama and no attempt was made by the Counsel to place on record to follow the procedure whilst seeking the discharge or withdrawing the vakalatnama, and subsequently the very Counsel filed restoration application. Thus, what emerges from the material is the Petitioner/complainant was equally responsible for not prosecuting the matter in a due diligence. On perusal of the material, I find that no error is committed by the learned Member of the Industrial Court. The order impugned in the present petition do not suffer from any illegality. The petition, thus, being thoroughly merit-less, deserves to be dismissed. The same is, accordingly, dismissed.

(PRASANNA B. VARALE, J.)