

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

WRIT PETITION NO. 10022 OF 2016

Dinesh Giga Wagh

.... Petitioner

Vs.

Sanghvi Premises Pvt Ltd

.... Respondent

Mr. Jitendra G. Shukla a/w. Mr. G.H. Shukla for the Petitioner.
Mr. Vikram Garewal a/w. Mr. Ajit Hon I/b. I.C. Legal for Respondent.

Coram : G.S. KULKARNI, J.

Date : 21 DECEMBER 2017

P.C:

1. Heard the learned counsel for the petitioner.
2. The challenge in this petition is to the order dated 22.6.2016 passed by the Appellate Bench of the Small Causes Court, Mumbai, whereby the application of the petitioner seeking condonation of delay in filing appeal raising a challenge to the order dated 20.10.2015 passed by the learned trial Judge stands dismissed.
3. By an order dated 03rd October, 2013, the suit as filed by the petitioner was dismissed for want of prosecution, as the advocate for the

petitioner did not remain present. The petitioner belatedly after about four months filed an application dated 10.11.2014 titled as MARJI Application No. 48 of 2014 seeking condonation of delay in making an application for restoration of the suit. The said application came to be allowed by order dated 10.11.2014 passed by the learned trial Judge thereafter, the learned trial Judge took up the application for restoration of the suit.

4. By an order dated 20th October, 2015, the learned trial Judge rejected the said application. Against this order, the petitioner had preferred an appeal before the appellate Court. Being aggrieved by the order dated 20th October, 2015, the petitioner approached the Appellate Bench of the Small Causes Court. There was a delay of 70 days in filing the appeal and therefore, the petitioner filed an application being MARJI Application no. 55 of 2016 seeking condonation of delay. By the impugned order 22nd June, 2016, the appellate Court rejected the said application.

5. I have heard learned counsel for the parties. The grounds on which the prayer for condonation of delay, as also restoration of the suit is principally the default on the part of the advocate for the

petitioner/plaintiff to remain present when the suit was taken up for adjudication in its normal course. The reasons set out are that the junior advocate to the petitioner's advocate was handling the matter and that she was on maternity leave. It is submitted that the reasons are bonafide. Also certain documents pertaining to the maternity and the birth certificate of the child were placed on record.

6. Considering the above case and the averments as made in that regard in the application, it appears that default on the part of petitioner's advocate not to appear in the matter was bonafide. In fact, the petitioner is himself a plaintiff in the suit and it is stated that already evidence on behalf of the plaintiff was filed before the trial Court. It is a settled principle of law that the party should not suffer for any lapse on the part of the advocate.

7. On the above background, I am of the opinion that interest of justice would be served by setting aside the impugned order and further to restore the suit to the file of the trial Court to be decided in accordance with law. However, this shall be subject to the petitioner making payment of cost of Rs. 15,000/- to the respondent and with further assurance and undertaking of the petitioner that, in future such defaults shall not occur.

Ordered accordingly.

8. Writ petition is allowed in the above terms. No costs.

(G.S. KULKARNI, J.)