

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 658 OF 2014

Shri Gangaram Shivram Kanade

..Petitioner

Vs.

Shri Sakharam Visram Adhvade

..Respondent

Mr. Kishor K. Malpathak, for the Petitioner.

Mr. Harsheel M. Inamdar, for the Respondent.

CORAM :- B. P. COLABAWALLA, J.

DATE :- JULY 11, 2017.

P. C.:

Rule. Respondent waives service. By consent, rule made returnable forthwith.

2 By this Writ Petition the Petitioner challenges the order dated 24th April, 2013 whereby the Trial Court dismissed the application filed by the Petitioner for condonation of delay of 32 days for setting aside the dismissal order passed in R. C. S. No.154 of 2010.

3 The Petitioner before me was the Plaintiff in R. C. S. No.154 of 2010. That Suit came to be dismissed for default on 22nd September, 2011. On the same day, the Petitioner moved an application for restoration of the Suit but the same was rejected on the ground that it was preferred at 6.30 p.m. Thereafter, the Applicant immediately moved an application for certified copy of the dismissal order which was made available on 4th November, 2011. The application for restoration of the suit was required to be filed on/before 3rd November, 2011. However, due to the old age and ailment of the Applicant, he could not pursue the matter and therefore delay of 32 days has occurred in filing the application for setting aside the order of dismissal.

4 The learned counsel appearing on behalf of the Respondent vehemently opposed this Writ Petition and submitted that there is nothing wrong in the impugned order as the Petitioner was unable to make out any sufficient cause for condoning the delay of 32 days. He submitted, therefore, that no interference is called for in the impugned order and

the Writ Petition be dismissed.

5 Considering the facts stated above, I do not think that the Trial Court was justified in dismissing the application for condonation of delay which was only of 32 days. In this view of the matter and considering the overall facts of the case, the impugned order dated 24th April, 2013 is quashed and set aside. The delay of 32 days is hereby condoned and R. C. S. No.154 of 2010 is restored back to the file of the Trial Court to be heard on merits and in accordance with law subject to the Petitioner paying costs quantified at Rs.2,500/- which shall be paid to the Respondent or his advocate within a period of one week from today.

6 Rule is made absolute in the aforesaid terms.

(B. P. COLABAWALLA, J.)