

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1590 OF 2017

Zire Rushi Construction and anr. .. Petitioners
vs.
The State of Maharashtra and ors. .. Respondents

Mr. Rajiv Narula i/b M/s. Jhangiani Narula & Associates for the
Petitioner.

Mr. Milind N. Jadhav i/b Sasikumar T.C. for Respondent No.5.

Ms Jyoti Chavan, AGP for the Respondent – State.

CORAM : M. S. SONAK, J.
DATE : 23 AUGUST 2017.

P.C. :-

1] Upon urgent mentioning, taken on Production Board.

2] Rule. With the consent of and at the request of learned
counsel for the parties, Rule is made returnable forthwith.

3] The challenge in this petition is to the order dated 29th
November 2016 and 12th June 2017 made by the Revisional
Authority dismissing the petitioners' revision as well as application
for restoration of the revision petition against the order of the
Deputy Collector dated 30 January 2014.

4] Mr. Narula, learned counsel for the petitioners, submits that there was no proper service of notice upon the petitioners and therefore, the petitioners did not attend the proceedings before the Revisional Authority. He submits that the material produced on record by way of affidavit-in-reply also does not indicate that any acknowledgment receipts were obtained from the petitioners. In these circumstances, Mr. Narula submits that there was no reason to dismiss the revision application and thereafter, the application for restoration for non-prosecution.

5] On the other hand, learned counsel for the respondents point out that the notices were served under certificate of posting. They rely upon the record maintained in the office of Revisional Authority in this regard. They point out that after the first order dated 29th November 2016 was made, the petitioners merely addressed a letter seeking *inter alia* restoration. They point out that the said letter was in fact taken into consideration, however, the petitioners once again failed to remain present and therefore, the second order was made on 12th June 2017.

6] If the material on record is perused, there is really no warrant to accept the petitioners' contention that there was no proper service. In any case, the petitioners were required to be more diligent after obtaining knowledge of the first order dated 29th November 2016. The impugned orders record the dates on which the matters were posted and the circumstance that the petitioners were never present. At least, in a situation of this nature the least that was expected was that the petitioners make enquiries with regard to the progress of the revision petition instituted by them.

7] However, Mr. Narula, learned counsel for the petitioners, submits that the petitioners were directed to avail the alternate remedy of revision by this Court and it is only appropriate that the petitioners are granted an opportunity of hearing on merits. Mr.Narula submits that the petitioners volunteer to pay costs of Rs.2.50 Lakhs, which costs, if there is no objection from the respondents, may be paid to the Tata Memorial Hospital, Parel. Mr.Naurla submits that the order made by the Deputy Collector has serious consequences and therefore, the petitioners should be offered an additional opportunity for testing the correctness of the order before the Revisional Authority.

8] Taking into consideration the aforesaid circumstances, subject to the petitioners making actual payment of Rs.2.50 Lakhs in favour of Tata Memorial Hospital, Parel within a period of two weeks from today, the impugned orders dated 29th November 2016 and 12th June 2017 are hereby set aside. The petitioners to pay Tata Memorial Hospital, Parel a sum of Rs.2.50 Lakhs, by way of Demand Draft, as undertaken by them within a period of two weeks from today and thereafter produce necessary receipt alongwith copy of the Demand Draft before the Revisional Authority. The Revisional Authority upon necessary verification, shall hear the revision petition instituted by the petitioners and dispose of the same in accordance with law and on its own merits.

9] All contentions of all parties are specifically kept open.

10] The Revisional Authority to endeavour to dispose of the revision petition as expeditiously as possible and in any case within a period of four months from the date of production of authenticated copy of this order.

11] The petitioners shall be at liberty to apply for interim relief, which application shall again be considered and and disposed of in accordance with law and on its own merits.

12] The parties to appear before the Revisional Authority on 11th September 2017 at 11.00 a.m. and produce an authenticated copy of this order alongwith proof of payment of costs. If, the amount of costs are not paid to Tata Memorial Hospital, Parel within a period of two weeks from today, the petitioners shall not have benefit of this order and this petition shall be deemed to have been dismissed without any further reference to this Court.

13] The petition is disposed of in the aforesaid terms

14] All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)