

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13646 OF 2017

MOGRABAI SHEGJI VASAVE
VERSUS
VIKRAMSING PRATAPSING VALVI AND OTHERS

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Advocate for Petitioner : Shri Jain Gajendra Devichand
Advocate for Respondents 1 & 3 : Smt. Kutti Chaitali
h/f Shri Kutti P.N.
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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 11, 2018
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PER COURT :-

1. The petitioner, who is the appellant before the appellate Court in RCA No. 7 of 2012, is aggrieved by the order dated 14.7.2017, by which, the appeal has been dismissed as the Advocate for the appellant failed to argue the matter on the said date.

2. I have considered the submissions of the learned Advocates for the respective sides. Learned Advocate for the respondent has strenuously defended the impugned order by contending that the appeal was pending for five years. Due to the pendency of the appeal, RCS No. 33 of 2012 was also pending. The appellant, who is the original defendant, desired to

delay the proceedings and hence, the hearing in the appeal was prolonged. In the alternative, it is submitted that if this Court is inclined to cause any interference, costs may be imposed on the petitioner to be donated for a humane cause.

3. I find from the record that the appeal has been dismissed only for the reason that the Advocate for the appellant was not present on 7.7.2017 and 14.7.2017. A valuable right of a litigant is lost on account of this factor. Ends of justice would be met by restoring the appeal, so as to enable the petitioner to work out the same on its merits. The costs to be imposed could be donated to the Government Medical College and Hospital, Aurangabad.

4. The learned counsel for the respondents submits that the petitioner has an alternate remedy by seeking restoration of the appeal before the same Court. I am not inclined to accept the said contention, since the pending appeal could be adjudicated upon on its own merits rather than creating further litigation in the matter.

5. Considering the above, this petition is allowed. The impugned order dated 14.7.2017 is quashed and set aside and

RCA No.7 of 2012 is restored to the file of the learned Ad-hoc District Judge, Shahada, Nandurbar. The litigating sides shall appear before the appellate Court on 2.7.2018. The appellate Court would endeavour to decide the appeal as expeditiously as possible, and preferably on/or before 31.10.2018. The litigating sides would be precluded from seeking adjournments on unreasonable and trivial grounds. The petitioner shall deposit an amount of Rs.3,000/- with the Dean, Government Medical College and Hospital, Aurangabad and produce a receipt of such deposit before the appellate Court on 2.7.2018.

(RAVINDRA V. GHUGE, J.)

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