

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 8709 OF 2017

Sou. Mangala Anandrao Chavan .. Petitioner
Vs.
Vishnupant Shamrao Modi .. Respondents

Mr. Rushikesh Patil I/b Mr. Kedar Lad, for petitioner.

CORAM : M.S. SONAK, J.

DATE : 27th JULY, 2018.

P.C. :-

1. Heard Mr. Rushikesh Patil, for the petitioner.
2. The challenge in this petition is to the order dated 03.02.2017 by which the learned trial Judge has restored R.C.S. No. 576 of 2011 upon recording satisfaction that there was sufficient cause for non-appearance of the applicant-original plaintiff on the date when the matter was fixed for evidence i.e. on 05.11.2014.
3. Mr. Patil, learned Counsel for the petitioner submits that, the delay in seeking for restoration was substantial whereas, the cause shown that condonation was not at all sufficient. He submits that learned trial Judge has not stated any good reasons for condonation of such delay and consequent restoration. On these grounds, Mr. Patil, submits that the impugned order warrants interference.
4. On perusal of the impugned order as well as the records, it cannot be said that the discretion exercised by the learned trial

Judge is unreasonable or indicative of any non application of mind. The applicant/plaintiff, in his application seeking condonation of delay as well as restoration had pointed that he is a senior citizen suffering from weakness and other ailments. Medical certificates have been produced on record from Lifeline Clinic at Rajarampuri. It appears that, the applicant's son was examined and thereafter cross-examined in the matter. Therefore, the learned trial Judge upon taking into consideration the advance stage of the applicant, the documents on record and the deposition of the applicants son has exercised discretion. In absence of any unreasonableness in the exercise of discretion, there is no case made out to warrant interference under Article 227 of the Constitution of India.

5. In all such matters, some lapse is inevitable on the part of the applicant seeking condonation of delay. However, that by itself is not sufficient to non suit such applicants. There are no *mala fides* in the explanation submitted. The explanation, apart from being probable was even backed by oral and documentary evidence.

6. Upon cumulative consideration of the aforesaid, this petition is liable to be dismissed and is hereby dismissed. There shall be no order as to costs.

(M.S. SONAK, J.)