

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 1624 OF 2018

Sandeep Vasant Sathe

..... Petitioner

VERSUS

The Bombay Education Society

..... Respondent

Mr.N.V.Bandiwadekar, i/b. Ms.Ashwini Bandiwadekar for the
Petitioner.

Ms.Naseem Patrawala for the Respondent.

CORAM : R.D. DHANUKA, J.

DATE : 6th SEPTEMBER, 2018

P.C.

By this petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 19th December,2017 passed by the learned District Judge – 2, Nashik dismissing the appeal for condonation of delay of 194 days in filing appeal and for dismissing the appeal i.e. Civil Misc.Appeal No. 72 of 2016 filed by the petitioner *inter alia* impugning the order dated 10th July, 2015 passed by the learned Joint Civil Judge, Senior Division, Nashik.

2. With the assistance of the learned counsel for the parties, I have perused the averments made in the application dated 12th January,2016 filed by the petitioner seeking condonation of delay in filing an application under order 9 rule 13 for a period of 194 days.

3. A perusal of the order dated 19th December,2017 passed by the

learned District Judge indicates that while dismissing the appeal filed by the petitioner, the learned District Judge has considered the reasons recorded by the petitioner in the application dated 12th January, 2016 as to why he did not remain present before the learned trial judge when the *ex-parte* decree came to be passed on 6th July, 2015.

4. After perusing the said application dated 12th January, 2016 filed by the petitioner, I am satisfied that for the reasons recorded therein, the petitioner has justified delay of 194 days in filing the said application for condonation of delay. The impugned order dated 19th December, 2017 passed by the District judge shows perversity. Impugned order dated 19th December, 2017 is accordingly quashed and set aside.

5. Civil Misc. Appeal No. 72 of 2016 filed by the petitioner is allowed.

6. The impugned order dated 10th July, 2015 passed by the learned Joint Civil Judge, Senior Division is set aside.

7. Application dated 12th January, 2016 for condonation of delay of 194 days is allowed. The learned trial judge shall proceed with the said application for setting aside the *ex-parte* decree on its own merits expeditiously.

8. The petitioner shall not seek any adjournment before the learned trial judge at any stage on any date and shall remain present whenever

the matter is placed on board.

9. If the petitioner remains absent for any reasons, the learned trial judge shall proceed with the said matter *ex-parte*. The parties are directed to appear before the learned trial judge on 17th September,2018 at 11.00 a.m. without fail.

10. Writ petition is allowed in the aforesaid terms. No order as to costs.

11. In view of the fact that the application filed by the petitioner under Order 9 Rule 13 of the Code of Civil Procedure, 1908 is directed to be heard on 17th September,2018, the respondent-decree holder shall not proceed with the said *ex-parte* decree till 21st September,2018.

12. The petitioner would be at liberty to apply for continuation of the interim order before the learned trial judge.

[R.D. DHANUKA, J.]