

Shailaja

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
WRIT PETITION NO.3136 OF 2018

Babasaheb Eknath Jadhav] Petitioner

Vs.

Hirabai Dasharath Amrale] Respondent

.....

None for the petitioner.

Later on

Mr. Vaibhav Gaikwad, for the Petitioner.

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CORAM : R.G. KETKAR, J.

DATE : 19TH MARCH, 2018.

P.C.

None appears for the petitioner when the matter is called out. The matter was heard on 16th March, 2018 and at the request of the learned Counsel for the petitioner, it was kept today high on board.

2. As none appears for the petitioner, it appears that the petitioner is not interested in pursuing this Petition. Hence, the Petition is dismissed in default.

Later on

3. Heard Mr. Gaikwad, learned Counsel for the petitioner. At the request of Mr. Gaikwad, order dismissing the Petition in default is recalled and the Petition is restored.

4. By this Petition under Article 227 of the Constitution of India, the petitioner has challenged the judgment and order dated 31st January, 2018

passed by the learned District Judge-7 Pune, in Civil Misc. Application No.93 of 2018. By that order, the learned District Judge rejected the application made by the petitioner for condoning the delay of 253 days caused in filing the appeal against the judgment and order dated 22nd April, 2017 passed by the learned 6th Additional Judge, Small Causes Court, Pune, in Civil Suit No.26 of 2016.

5. The matter was heard on 16th March, 2018 and at the request of Mr. Gaikwad, it was adjourned till today so as to enable him to take appropriate instructions.

6. Mr. Gaikwad, on instructions states that the petitioner desires to withdraw this Petition with liberty to file application under Order-IX, Rule-13 of the Code of Civil Procedure, 1908 (for short 'C.P.C') for setting aside decree passed by the trial Court on 22nd April, 2017. He states that the petitioner will not proceed with the appeal before the District Court. He further states that he will file necessary pursis before the District Court for withdrawal of the appeal. He submitted that it may be clarified that while deciding the application under Order-IX, Rule-13, learned trial Judge will decide the same un-influenced by the observations made in the impugned order. He further states that this Petition was instituted on 16th February, 2018. Time spent by the petitioner in prosecuting this Petition from 16th February, 2018 till today may be ordered to be excluded while considering the delay in filing the application under Order-IX, Rule-13 of C.P.C.

7. In view thereof, on the motion made by Mr. Gaikwad, Petition is allowed to be withdrawn with liberty to file application under Order-IX, Rule-13 of C.P.C for setting aside judgment and decree dated 22nd April, 2017 passed by the learned 6th Additional Judge and as such is disposed of. Learned

District Judge will permit the petitioner to withdraw the appeal upon production of the authenticated copy of the order. If application under Order-IX, Rule-13 is filed for setting aside ex-parte decree, the learned trial Judge will decide the the same on the basis of evidence on record and in accordance with law un-influenced by the observations made in the impugned order. Time spent by the petitioner in prosecuting this Petition from 16th February, 2018 till today shall be excluded while considering the application for condonation of delay in filing application under Order-IX, Rule-13. Order accordingly.

8. All the parties including the Courts below to act upon an authenticated copy of this order.

[R.G. KETKAR, J.]