

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION No. 14049 of 2017

Avinash Anantrao Jadhav & Anr .. Petitioners.
Vs
Govind Dadu Pisal & Ors .. Respondents.

Mr Bhooshan R. Mandlik for the Petitioners.
Mr. Abhijit M. Adagale for Respondent No.1.

CORAM: B.P.COLABAWALLA, J.
DATED : NOVEMBER 29, 2018

P.C. :-

1 This writ petition has been filed seeking to challenge the order dated 27th March, 2017 passed by the learned District Judge-8, Kolhapur below Exh.19 in Regular Civil Appeal No. 112/2013. The petitioners herein were the original defendant No. 19 and 20 before the trial Court being Joint Civil Judge, Senior Division, Kolhapur in Regular Civil Suit No.595 of 1985. In this suit a decree came to be passed against the petitioners herein (original defendant No. 19 and 20).

2 Being aggrieved by the judgment and decree, Regular Civil Appeal No.112/2013 was filed before Appellate Court. This appeal was not prosecuted by the appellants on a regular basis as can be seen from the order of the Appellate Court dated 16th March, 2017. The Appellate

Court records that the appellants and their advocate have remained absent on several occasions and none of the appellants have taken steps for serving the respondents. Considering all these facts, the Appellate Court on 30th August, 2016 passed an order recording that the appellants had not taken steps since a long period and hence kept the matter for further orders. Thereafter, the matter came up on 16th March, 2017 when the appeal was dismissed for want of prosecution as none appeared on behalf of the appellants even on that date. Thereafter, Exhibit-19 was filed by the appellants seeking re-admission of the appeal under section 151 of the Code of Civil Procedure. This application was dismissed by the Appellate Court by the impugned order dated 27th March, 2017 and hence the present writ petition.

3 I have heard the learned counsel for the petitioners at some length and I have also perused the impugned order. I do not find that any interference is called for under Article 227 of the Constitution of India. From the facts narrated earlier, it is quite clear that the Appellate Court has shown substantial indulgence to the appellants in prosecuting their appeal. Despite this, the appellants chose to remain absent before the Appellate Court. It was in these circumstances, the Appellate Court was constrained to dismiss the appeal.

4 As noted by the Appellate Court even in the impugned

order, steps to serve the respondents were not taken by the appellants. This lackadaisical attitude adopted by the appellants in prosecuting their appeal was taken note of and thereafter the appeal was dismissed. This being the case, I do not find that the order of the Appellate Court suffers from any perversity or is vitiated by any error apparent on the face of the record that would require my interference under Article 227 of the Constitution of India. The writ petition is therefore accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B.P.COLABAWALLA, J)