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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 12253 OF 2017

Pandurang Rajaram Inamdar	...	Petitioner
V/s.		
Accelya Kale Solutioins Limited	...	Respondent.

Mr. Pradeep Lamba, for the Petitioner.
Mr. R. S. Apate, Senior Advocate a/w Meraj Khan Pathan
i/by RajeshH. Singh, for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 22nd MARCH, 2018.

P.C. :

1] Heard learned counsel for the petitioner and learned Senior Counsel for the respondent.

2] By this petition filed under Article 227 of the Constitution of India, the petitioner is challenging the order dated 15.7.2017, passed by the Ad-Hoc District Judge -1, Kolhapur, thereby allowing Misc. Civil Appeal No.1351 of 2017.

3] The said appeal was preferred by the respondent herein challenging the order passed by the Civil Judge Senior Division, Kolhapur, on the Misc. Application filed under Order 9 Rule 13 of Civil Procedure Coded, for setting aside the judgment and decree

passed in Special Civil Suit No.173 of 2004.

4] The submission of learned counsel for the petitioner is that as per the own case of respondent company, they were aware and also tracking the progress of the suit till 9.4.2012. Thereafter also the matter was adjourned repeatedly by the Court, in order to enable the respondent to conduct the cross examination of petitioner-plaintiff. Ample opportunities and repeated adjournments were granted and then the evidence was closed. Thereafter also, the matter was adjourned from time to time for arguments and then for judgment. Ultimately the judgment was pronounced on 19.6.2012. Only thereafter, this application was filed for setting aside the exparte decree.

5] It is urged that the grounds given by the respondent for setting aside said exparte decree are also not correct and justifiable. It is submitted that on the Vakalatnama filed on behalf of respondent, there were names of four advocates and all of them were supposed to pursue and take stock of the proceeding in the suit. Hence it cannot lie in the mouth of the respondent that it's advocate could not remain present, hence respondent could not proceed with the cross examination and further progress of the suit.

6] According to learned counsel for the petitioner, trial Court has rightly considered all these aspects and has rejected the

application filed by the respondent under Order 9 Rule 13 of C.P.C. The Appellate Court, therefore, should not have entered in the said order and set aside the same.

7] Per contra, learned counsel for the respondent has supported the order of the Appellate Court, by pointing out to the fact that the Senior Advocate, who was representing the cause of the respondent in the trial Court, has become sick and as a result thereof, he could not pursue the matter, it's other advocates whose names and signatures were appearing on the Vakalatnama, were only junior advocates and in view thereof, respondent could not prosecute the matter. The Appellate Court has considered this aspect and hence to decide the matter on merits, has set aside the exparte decree and allowed the suit to proceed on merits.

8] It is true that till 09.04.2012, respondent was keeping the track of the matter and thereafter it has not pursued the said matter. However, the fact remains that respondent has filed two applications for adjournments, may be the trial Court has allowed the same and ultimately rejected the third application and closed the evidence, it is a matter of record that respondent's advocate was on leave in April, 2012 on account of his illness and due to Summer Vacation, the next date could not be informed. As a result, the suit proceeded exparte and came to be decreed.

9] Definitely there is some negligence on the part of respondent, but the cause attributed to it's advocate, cannot be totally ignored. The respondent cannot be made to suffer for the illness of it's advocate. Even otherwise, law expects that the matter should be decided on merits and for lapse, either on the part of advocate or the part of respondent, the substantive cause of justice should not suffer. Laws are made to advance the cause of justice and not to scuttle the same, especially on technical grounds.

10] Now it is a matter of record that the suit is restored to its file and learned counsel for respondent submits that the respondent is ready to abide by the conditions that may imposed by this Court so as to decide the said suit as expeditiously as possible.

11] Learned counsel for the petitioner submits that as on today an amount of Rs.1,60,00,000/- has become due in view of the exparte judgment and decree and the execution application for recovery of the same is also filed. According to him, unless the said amount is deposited in the Court, respondent should not be granted permission to proceed with the suit; otherwise, the order passed by the Appellate Court be set aside.

12] Learned counsel for the petitioner also points out that after the suit is restored to its file, respondent has filed application at Exh.66 under Order 8 rule 9 of C.P.C. for filing of Additional Written

Statement and the application at Exh.67 for for framing of preliminary issue under Section 9-A of C.P.C., Thus, it is submitted that, respondent is making every attempt to protract and prolong the hearing of the suit, thereby depriving the petitioner from getting his lawful dues.

13] In view thereof, learned Senior Counsel for respondent makes a statement at Bar that respondent will not press the application at Exh.67 relating to framing of preliminary issue. Even in respect of Application at Exh.66, respondent will only seek amendment relating to change in the title of respondent company and will not press other amendments. He further makes a statement at Bar that respondent will proceed with the hearing of the suit from the stage of conducting cross examination of the petitioner. Learned Counsel also makes a statement that respondent company is ready to deposit the amount of original claim of the petitioner, that is Rs.4,50,000/- in the Court.

14] In view thereof, in my considered opinion, it would be in the interest of justice, to confirm the order of the Appellate Court and to restore the suit to its original file from the stage of cross examination of the petitioner with direction to the trial Court to decide the suit, as expeditiously as possible and preferably within three months from the receipt of this order.

15] This order is passed subject to condition that respondent should deposit an amount of Rs.5,00,000/- in the trial Court, within one month from the date of this order and on deposit of the said amount, the trial Court shall invest the same in any nationalized bank till disposal of the suit. In addition, the respondent shall pay costs of Rs. 50,000/- to the petitioner including the costs of Rs.5,000/- which is awarded by the Appellate Court, within two weeks from the receipt of this order.

16] The Writ Petition is disposed of in above terms.

17] It is made clear that all the contentions are left open to be decided by the trial Court.

18] Both the parties to attend before the trial Court on 06.04.2018.

19] The parties to act on the authenticated copy of this order.

[DR.SHALINI PHANSALKAR-JOSHI, J.]