

IN THE HIGH COURT OF JUDICATURE OF BOMBAY  
BENCH AT AURANGABAD

WRIT PETITION NO.13963 OF 2018

FAKIRKHAN JALALKHAN  
VERSUS  
RAIBHAN SABDAS RABADA THORUGH LRS

...  
None present.  
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CORAM : RAVINDRA V. GHUGE, J.  
Dated: January 29, 2019  
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PER COURT :-

1. This Court ( Coram : N.M.Jamdar, J.) has noted the absence of the petitioner in the order dated 17.12.2018.
2. Even today, none appears for the petitioner.
3. In view of the above, this petition can be dismissed for want of prosecution. However, I am considering the same by going through the pleadings in the memo of the petition and the accompanying documents.
4. The petitioner / original defendant No.2 is aggrieved by the order dated 30.7.2018, by which, the appellate Court has allowed Misc. Civil Application (RJE) No.176 of 2009 and has condoned the delay of

25 months and has restored RCA No. 148 of 2003. Costs of Rs.5,000/- have been imposed.

5. The suit property is an immovable property. The suit was for specific performance of contract, which was dismissed on 25.8.2003. RCA No.148 of 2003 was preferred on 19.9.2003, within limitation. On 5.10.2007, as the Advocate and the plaintiff were absent, the appeal was dismissed in default.

6. In my view, merely because the Advocate remained absent, should not have prompted the appellate Court to dismiss the appeal in default. It could have considered the appeal on its merits by hearing the available parties. Nevertheless, the delay of 25 months caused in filing the Misc. Application cannot be said to be an inordinate or deliberate delay. The plaintiff does not gain any advantage by neglecting his own proceedings when his suit has already been dismissed. The appellate court did not notice laches / oblique motives on the part of the plaintiff. In order to balance equities, the appellate Court has imposed costs of Rs.5,000/- .

7. In view of the above, I do not find that the justice delivery system can be said to have failed and the impugned order, therefore, cannot be termed as being perverse or erroneous.

8. This petition being devoid of merits is, therefore, dismissed.

9. Needless to state, since the appeal was lodged in 2003, the appellate court would decide the said appeal, if not already decided, on its own merits and preferably on/or before 30.6.2019.

( RAVINDRA V. GHUGE, J. )

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akl/d