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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.13757 OF 2017

Vithal s/o Gunderao Salgante PETITIONER
Age - 56 years, Occ - Service as
Head Master, Zilla Parishad Central Primary School
Khalangri, Taluka - Renapur
District - Latur

VERSUS

1. The Additional Divisional Commissioner RESPONDENTS
Aurangabad Division, Aurangabad
2. The Chief Executive Officer,
Zilla Parishad, Latur
3. The Education Officer (Secondary)
Zilla Parishad, Latur

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Mr. V. G. Kodale h/f Mr. P. G. Rodge, Advocate for the petitioner
Mr. S. B. Pulkndwar, AGP for respondent - State
Mr. P. R. Tandale, Advocate for respondent No. 2

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 11th JANUARY, 2019

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally by consent.
2. The petition has been moved against order dated 13th September, 2017 passed by Additional Divisional Commissioner, Aurangabad refusing to condone delay in restoration of appeal

filed by the petitioner.

3. It appears that the appeal filed by the petitioner had been dismissed in default on 9th December, 2015 and thereafter, an application for restoration had been filed on 5th August, 2016, which had been belated by about seven months.

4. Learned advocate for the petitioner submits that advocate had been engaged on behalf of the petitioner to prosecute the appeal which had been pending since 2013 and had lingered on for quite a while. It was difficult for the petitioner to personally oversee progress in the proceedings as already an advocate had been engaged by him. As such, it was not expected of the petitioner to give unremitting attention to the pending proceedings. In the process, for the default for appearance on a single day, the appeal had been dismissed and it had been realized by the petitioner belatedly and an application accordingly had been moved for condonation of delay in restoration of appeal. The same has been rejected by learned Additional Divisional Commissioner, pedantically approaching the matter and in the process, valid cause of the petitioner is getting lost.

5. Learned advocate Mr. Tandale, appearing on behalf of

respondent No. 2 and learned AGP, purport to stiffly oppose the writ petition stating that there are no plausible reasons coming forth, which would bear character of sufficient cause. They submit that the matter has been pending since 2013 and had been dismissed in default on 9th December, 2015. Thereafter, application had been moved in August, 2016. There is no explanation worth consideration for intervening period of seven months. They, therefore, urge not to indulge into the request being made under the writ petition.

6. Although learned advocates for the respondents purport to resist the writ petition, veracity of the events submitted by the petitioner does not appear to have been seriously challenged. Fact of advocate being engaged and he had been looking after the matter and that the matter was pending since 2013, are indisputable facts. Learned advocate for the petitioner, during the course of his submissions has referred to and relied on a decision of the Supreme Court in the case of “*Rafiq and Others V/s Munshilal and Others*” [Manu/SC/0076/1981: AIR 1981 SC 1400]. Head note of the same reads, thus -

“ *Constitution – Recalling of order – Appeal filed by Appellant disposed of by High Court in the absence of the learned counsel – application filed to recall the order dismissing the appeal and to permit to participate in*

*hearing of the appeal – application dismissed by high court
– Held, no fault of the party who having done everything in
his power and expected of him would suffer because of
default of his advocate – Court could not be a party to an
innocent party suffering injustice merely because his
chosen advocate defaulted – Order of the High Court
dismissing the appeal and refusing to recall that order set
aside – Appeal allowed ”*

7. Having regard to aforesaid, it would be expedient that petitioner's cause should not be let to suffer by refusing condonation of delay and opportunity to the petitioner be made available to have contest on merits.

8. As such, writ petition is allowed. Impugned order dated 13th September, 2017 passed by Additional Divisional Commissioner, Aurangabad is set aside. It is expected that pending appeal is proceeded with expeditiously. Learned advocate for the petitioner states that a sum of Rs.5000/- would be paid to the High Court Bar Association Library, Aurangabad. Rule is made absolute in aforesaid terms.

**[SUNIL P. DESHMUKH]
JUDGE**