

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1361 OF 2019

Jaspal Singh Malhar Singh	...Petitioner
vs.	
Jijabai Dattatreya Patil and Ors.	...Respondents

Mr. N.P. Shimpi, for the Petitioner
Mr. Ganesh Koli, for Respondent Nos. 1, 3 to 6.
Mr. Rohan Barge, for Respondent No. 2.

CORAM : M. S. SONAK, J.

DATE : APRIL 03, 2019

JUDGMENT

- . Heard learned counsel for the parties.
2. Mr. Shimpi, the learned counsel for the Petitioner states that all the contesting Respondents have been served in the matter.
3. Looking to the controversy involved, rule is granted and the same is made returnable forthwith.
4. The challenge in this Petition is to the order dated 5th January, 2019 below Exhibit 52 by which the learned Appeal Judge declined to extend the status quo which was earlier granted pending Civil Misc. Application No. 176 of 2018.

5. From the record, it appears that the Petitioner was not diligently pursuing the Appeal and therefore the learned Appeal Judge refuse to extend the status quo order. The record further indicates that there was application for condonation of delay in instituting the Appeal. The contesting Respondents in fact opposes the condonation. Yet the Appellant was not interested in proceeding with the Appeal. It is in these circumstances, the status quo order was not extended by the Appeal Court.

6. Look from the perceptive of the learned Appeal Court or from the perceptive of the Respondents who are interested in expeditious disposal of the Appeal, it can not be said that the impugned order is incorrect. However, the learned counsel for the Petitioner on the basis of instruction from the Petitioner who is present in the Court, has assured this Court that the Appeal will be proceeded with diligently and no unnecessary adjournment will be applied for. The Appellant also offer to pay costs of Rs. 1 lakh in favour of the contesting Respondents.

7. Accordingly, this Petition is disposed of with the following order:

(a) The impugned order dated 5th January, 2019 is set aside and the status quo which was granted earlier by order dated 3rd October, 2018 is hereby restored and the same shall operate during the pendency of the Appeal i.e. Civil Misc. Application No. 176 of 2018.

(b) The Application is for condonation of delay in instituting of the Appeal is hereby condoned with consent. The application to be indicated as disposed of accordingly.

(c) The aforesaid relief is subject to the Petitioner's deposit before the Appeal Court the amount of Rs. 1 Lakh (One Lakh) within a period of two weeks from today. If this amount is deposited then the contesting Respondent Nos. 1 to 6, 13 and 17 to 19 are entitled to withdraw the same unconditionally on pro-data basis.

(d) If the amount of costs are not deposited within two weeks from today, then this Petition shall deemed to have been dismissed with cost of Rs. 25,000/-.

(e) If the costs are deposited and the status quo order is to

continue during the pendency of the Appeal, then the Appeal Court is directed to dispose of the Appeal as expeditiously as possible and in any case within a period of three months from today.

(f) However, it is made clear that in case the Petitioner does not deposit the costs and the status quo order is not operate, then Appeal to be disposed of on its own terms.

(g) It is made clear that this Court has not adverted on the merits of the matter and therefore all contentions of the parties are left open for the determination by the Appeal Court.

8. Rule is made absolute in the aforesaid terms.

9. All concerned to act on the basis of authenticated copy of this order.

(M. S. SONAK, J.)