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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3087 OF 2019

Sanjay Ramchandra Ramane	..Petitioner.
V/s.	
M/s. Pardesi Brothers	..Respondent.

Mr.Prashant Darandale for the petitioner.

Mr.Prajakt M.Arjunwadkar for the respondent.

CORAM : M.S.SONAK, J.

DATE : APRIL 9, 2019

P.C.:-

Heard Mr.Darandale, learned counsel for the petitioner and Mr.Arjunwadkar, learned counsel for the respondent.

2. Rule. Rule made returnable forthwith with the consent and at the request of the parties.

3. Though there is merit in the contention of Mr. Arjunwadkar that the impugned order is appealable under Order 43 Rule 1(c) of the Code of Civil Procedure (CPC), in the peculiar facts of the present case, the petitioner is not relegated to avail alternate remedy.

4. The peculiar facts of the present case are that, the impugned order declined to condone the delay of about one month in

seeking restoration of the CMA No.1/2018 which was itself an application to seek restoration of CMA No.32/2015. The later application seeks condonation of 63 days delay in instituting appeal before the District Court.

5. At this stage, if the parties are relegated to institute an appeal, there will be avoidable delay because the cause shown by the petitioner for the 30 days delay is that the petitioner had entrusted the matter to the advocate and expected the advocate to attend the same diligently. Instead, the advocate failed to appear and there was no proper intimation sent to the petitioner.

6. Although the reason is not too convincing, but considering the fact that the delay is hardly of 30 days, the Court could have condoned the delay subject to payment of costs.

7. Accordingly, the impugned order is set aside subject to payment of costs of Rs.10,000/- to be paid within a period of four weeks from today. The costs may either be paid to the respondent or deposited before the trial Court within a period of four weeks from today.

8. If the petitioner fails to pay or deposit the costs within a period of four weeks from today without seeking any extension of time, then, the petition shall be deemed to have been dismissed with costs of Rs.5,000/- without further reference to this Court.

9. If the costs are indeed paid or deposited, the impugned order dated January 18, 2019 shall stand set aside and CMA No.1/2018 shall stand allowed and the delay shall stand condoned and further even the CMA No.32/2015 shall stand restored.
10. Upon restoration, learned Appeal Court fot dispose of CMA No.32/2015 and in accordance with law on its own merits.
11. Rule is made absolute in the aforesaid terms.
12. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)