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

WRIT PETITION NO. 8120 OF 2019

Suryakant Bhikaji Hadikar ..Petitioner

vs.

Sunanda Rajaram Dongrikar & ors. ..Respondents

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Shri P.J. Thorat for the petitioner.

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CORAM : M.S.KARNIK, J.

DATE : 25th SEPTEMBER, 2019

P.C. :

Heard learned counsel for the petitioner.

2. The order under challenge is an order passed by the trial Court restoring the suit which was dismissed for default. The petitioner is the original defendant No.1. The plaintiff had filed the suit for partition and separate possession. The said suit was dismissed in default on 6/2/2013. After 1400 days Notice of Motion was filed by the plaintiff for restoration of the suit. The reason given in Notice of Motion is that the Advocate concerned did not inform the plaintiff about progress of the matter and the

plaintiff was relying on the Advocate. The plaintiff is the married sister of defendant No.1.

3. The trial Court allowed Notice of Motion and imposed cost of Rs.10,000/- to be paid to each of defendant Nos.2(a) to 2(c).

4. Learned counsel for the petitioner would submit that there is hardly any reason in Notice of Motion for restoration of a suit which was dismissed in default almost 4 years prior to filing of Notice of Motion. The reason that Advocate was not diligent in attending the litigation is not at all sufficient to condone the delay. He would further submit that though no reply is filed on behalf of defendant Nos. 2(a) to 2(c), the order records that the reply as in fact be filed by defendant Nos. 2(a) to 2(d). He further submits that even operative part of the order passed by the trial Court would show that the cost of Rs.10,000/- are to be paid to each of defendant Nos. 2(a) to 2(c) who had not even filed reply in the proceedings.

5. Be that as it may, what the trial Court has done is to condone the delay of 1400 days in restoring the suit which was dismissed in default.

6. I have gone through the order passed by the trial Court. The trial Court has found substance in the explanation which was given by the plaintiff. In paragraphs 4 and 5 the trial Court has recorded the reasons as to why the explanation as submitted by the plaintiff deserves acceptance. Ultimately, the trial Court has allowed the application for restoration of the suit by imposing cost of Rs.10,000/-. I do not see any reason to interfere with the discretion exercised by the trial Court in condoning the delay of 1400 days in filing the application for restoration. Moreover, the trial Court has directed the plaintiff to pay cost of Rs.10,000/-. In the order passed by the trial Court it is obviously an error that the cost of Rs.10,000/- are directed to be paid to each of defendant Nos.2(a) to 2(c). Instead the cost of Rs.30,000/- imposed by the trial Court should be paid by plaintiff to defendant No.1. The order passed by the trial Court

is modified to that extent.

7. Subject to what is observed, the Petition is disposed of.

(M.S.KARNIK, J.)

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