

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5627 OF 2017

Laxman U. Choudhari .. Petitioner
vs.
Giridharilal G. Champachariya and anr. .. Respondents

Mr. S.S. Patil for the Petitioner.

CORAM : M. S. SONAK, J.
DATE : 16 APRIL 2019.

P.C. :-

- 1] Heard Mr. S.S. Patil for the petitioner.
- 2] The challenge in this petition is to the order dated 21st January 2016 by which learned District Judge has not only condoned the delay in restoring Civil Miscellaneous Appeal No. 8 of 2014 but further proceeded to restore the appeal itself which came to be dismissed for non-prosecution.
- 3] Mr. Patil, learned counsel for the petitioner, submits that the matter was posted only for condonation of delay. Whilst deciding the application for condonation of delay, the Appeal Court has no jurisdiction to order restoration of the appeal which came to be dismissed for default. He submits that the impugned order is therefore in excess of jurisdiction.
- 4] Upon due consideration of the aforesaid contentions and perusal of the impugned order, according to me, there is

no case made out to warrant interference in the exercise of supervisory jurisdiction under Article 226 of the Constitution of India.

5] This is because the reasons for condonation of delay and the reasons for seeking restoration of the appeal which came to be dismissed for non-prosecution are one and the same. Once, the Appeal Court came to the conclusion that sufficient cause was shown for condonation of delay, no doubt, subject to payment of costs of Rs.10,000/-, the appeal Court had no other option than to restore the appeal. As otherwise, there might have been contradiction in the approach of the Appeal Court.

6] Therefore, on the basis of technical objection that the matter was posted only on the issue of condonation of delay and not on restoration, there is no case made out to interfere with the impugned order.

7] Accordingly, this petition is dismissed. There shall be no order as to costs.

(M. S. SONAK, J.)