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

**CIVIL APPLICATION NO.2582 OF 2018
IN
WRIT PETITION NO.5752 OF 2001**

Chairman,
Nashik District Rural Development
Department
Vs.

.. Applicant/Petitioner

Sunil Babanrao Datte

.. Respondent

Mr. A.R. Kapadnis for the applicant/petitioner.

Mr. Pradeep Zende I/b. Nandu V. Pawar for the respondent.

CORAM : A.K. MENON, J.

DATED : 11TH FEBRUARY, 2019.

P.C. :

1. This civil application seeks recall and setting aside of an order of dismissal of the writ petition and seeks restoration of the petition. There is a delay of 206 days. It appears that the applicant/petitioner's Advocate was elevated as a Judge of this Court and hence when this matter appeared on 20th August, 2016, the Court passed an order that the matter should not be placed before the learned Judge. Thereafter the petition came up on 14th February, 2018 before this Court when neither party was present, accordingly, the matter was kept for dismissal on 21st February, 2018.

2. On 28th February, 2018, when the matter was called, the petitioner and their Advocates were absent. The Court recorded first respondent's presence and it was also found that Court notice was served on the petitioner as recorded on the farad sheet. Despite that the petitioner did not enter appearance and hence the petition came to be dismissed.
3. Today, it is submitted that the petitioner had upon the elevation of their previous Advocate handed over the papers to their new Advocate Mr.Gangurde but his name had not been shown and hence Mr. Gangurde could not appear. This is the reason given for remaining absent on 28th February, 2018.
4. The application is opposed on behalf of the respondent who has filed an affidavit in reply dated 4th February, 2019. In the affidavit, it is stated apart from the contention on merits that there is delay of about eight months even after the civil application was lodged. The civil application was lodged on 22nd October, 2018 but was apparently served much later and was circulated only on 12th December, 2018 i.e. two months after it was lodged. The civil application therefore opposed on that basis.
5. Having heard the learned counsel for the parties, I find that sufficient

opportunity was given to the petitioner including by service of notice through Court. Despite this, the petitioner made no efforts to enter appearance. Mr. Gangurde has apparently had not entered appearance. However, considering the fact that there was sufficient cause for the petitioner not to remain present by virtue of their Advocate's unavailability which apparently caused some delay, in my view the application shall be allowed subject to payment of costs to the respondent.

6. Accordingly, I pass the following order;

- (i) Civil application is allowed in terms of prayer clauses (a) to (c), subject to payment of costs of Rs.5000/- to the respondent. Costs to be paid within a period of two weeks from today.
- (ii) If the costs are paid, list the writ petition for admission along with civil application no.1509 of 2004 on 14th March, 2019.

(A.K.MENON,J.)