

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

WRIT PETITION NO.14749 OF 2018

Vikram Advani and Anr. .. Petitioners

V/s.

Pune Municipal Corporation .. Respondent

Mr.Vishal Kanade I/b Mr.Satish Raut for the petitioners

Mr.Vishwanath Patil for the respondent no.1

Mr.R.P.Kadam, A.G.P. for the respondent no.2

CORAM: K.K. TATED, J.

DATED : JANUARY 4, 2019

P.C. :

1 Heard.

2 By consent matter is taken on board for final hearing at the stage of admission.

3 By this Writ Petition, under Article 227 of the Constitution of India, petitioner is challenging the order dated 19.10.2018 passed by learned District Judge-18, Pune in Misc. Civil Application No.706 of 2018 rejecting petitioner's Misc.Appeal under Order 41 Rule 19 of the Code of Civil Procedure, 1908 for re-admission/restoration of Misc.Civil Appeal No.484 of 2016

from the file of Hon'ble District Judge-20, Pune which was dismissed for default on 20.06.2018.

4 It is to be noted that on 03.02.2018 advocate for the petitioner as well as Respondent were present before appellate court. That time matter was adjourned to 06.03.2018. On 06.03.2018 no one appeared on behalf of petitioner. Hence, matter was posted to 04.06.2018. On 04.06.2018 no one appeared on behalf of petitioner. Therefore, matter was posted for dismissal on 20.06.2018. On 20.06.2018 matter stands dismissed for non-prosecution.

5 The learned counsel for the petitioner submits that father in law of the advocate on record was ill from 21.02.2018 to 28.04.2018 and died on 28.04.2018. Hence, no one appeared on behalf of petitioner before appellate court. He further submits that petitioner no.2 delivered a baby girl on 09.04.2018 and hence, could not attend the court. He submits that because of mistake on the part of advocate, litigant should not suffer. He submits that in the interest of justice, impugned order dated 19.10.2018 passed by learned District Judge-18, Pune in Misc.Civil Application No.706 of 2018 be set aside and Misc.Civil Appeal No.484 of 2016 be directed to hear on its own merits. He submits that if present Writ Petition is not allowed, irreparable loss will be caused to the petitioner, that also because of mistake on the part of Advocate.

6 On the other hand, the learned counsel for the respondent vehemently opposed the present. He submits that petitioner

failed to make out any case for not remaining present on 06.03.2018, 04.06.2018 and 20.06.2018 before the Appellate Court when the matter was called out for hearing. He further submits that even Court below specifically recorded in paragraph 7 of the impugned order that petitioner obtained status quo order till the decision of the appeal, therefore, no one remained present on behalf of them. Therefore, there is no question of allowing the present Writ Petition.

7 Heard.

8 It is to be noted that in the present proceeding, actually on three occasions no one appeared on behalf of petitioner when the matter was called out before the appellate court. It is specifically stated in the application that Advocate's father in law was not keeping well from 21.02.2018 to 28.04.2018 and died on 28.04.2018. On the other hand, petitioner no.2 delivered a baby girl on 09.04.2018. It is to be noted that because of mistake on the part of advocate litigant should not suffer.

9 Considering these facts, I am of the opinion that order passed by the Trial Court is required to be set aside, allowing petitioner's Misc. Civil Application No.706 of 2018 and directing appellate court to decide petitioner's Misc.Civil Appeal No.484 of 2016 on its own merits.

10 At the same time, petitioner to pay cost of Rs.5,000/- to the respondent no.1. Hence, following order:

- a) Order dated 19.10.2018 passed by learned District Judge-18, Pune below in Misc.Civil Appln. No.706 of 2018 is set aside.
- b) Application filed by the petitioner under Order 41 Rule 19 of the Code of Civil Procedure, 1908 being Misc.Civil Appln. No.706 of 2018 is allowed.
- c) Misc.Civil Appeal No.484 of 2016 is restored on file for hearing on its own merits.
- d) Petitioner to pay cost of Rs.5,000/- to the respondent no.1 Pune Municipal Corporation on or before 31.01.2019 and place on record receipt to that effect, failing which Writ Petition shall stand dismissed without referring back to the court.
- e) Writ Petition stands disposed of accordingly.

(K.K. TATED, J.)