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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.14266 OF 2017

Dimple Drums and Barrels Pvt. Ltd. Co. ..Petitioner.
V/s.
Narayan Ramchandra Mule (since deceased)
through LRs. & Anr. ..Respondents.

Ms.Preeti Walimbe I/b. Bhushan Walimbe for the petitioner.

Mr.Pritesh Oak for the respondents.

CORAM : M.S.SONAK, J.

DATE : APRIL 12, 2019

ORAL JUDGMENT

Heard Ms. Preeti Walimbe, learned counsel for the petitioner and Mr.Oak, learned counsel for the respondent.

2. On April 23, 2016, this Court made the following order :-

“ Assailing the order passed by the Appellate Court whereby Assailing the order passed by the Appellate Court whereby the delay of 2 years has been condoned, learned Counsel for the petitioner submits that apart from the fact that no explanation has been offered by the heirs of deceased– respondent No.1 Narayan Ramchandra Mule for delay caused in moving an application for bringing the heirs of deceased on record, the trial Court has allowed the application without imposing cost.

2. *I find some substance in the contention of the learned Counsel*

for the petitioner that while condoning the delay of 2 years, learned Appellate Court should have imposed costs.

3. Issue notice to respondent Nos.1a and 1b, returnable on Jun 18, 2018.”

3. In the aforesaid, this petition is restricted to the issue of costs which the petitioner contends, should have awarded while condoning the delay of two years in bringing the legal representatives of the deceased on record before the Appeal Court.

4. Ms.Walimbe, learned counsel for the petitioner submits that the delay was of two years and, therefore, even if sufficient cause was shown for condoning the same, costs should have been imposed upon the respondents. She submits that the costs should not be as excessive as to render the right of appeal infructuous and at the same time also not be so meagre not to deliver a message to the opposite party.

5. Mr.Oak, learned counsel for the respondents states that respondent is an autorickshaw driver. He submits that the petitioner is a company. He submits that the issue of awarding costs is essentially a matter of discretion and in this case, the discretion has been exercised. He, therefore, submits that the petition be dismissed.

6. As contended by Mr.Oak, payment of costs is undisputedly a issue in the realm of discretion of the Court. In the present case,

however, learned Appeal Court has not exercised this discretion at all. There is no discussion as to why costs were not required to be imposed while condoning the substantial delay of two years. It is true that the Court has to be liberal in the matters of condonation of delay as held by the Appeal Court, but at the same time, the Court cannot forget the opposite part altogether and suitable order of costs has to be made.

7. In the facts and circumstances of the present case, the respondent is liable to pay costs of Rs.5,000/- to the petitioner within a period of four weeks from today. The payment of costs in the facts and circumstances of the case shall not be a condition precedent.

8. If there is any difficulty in actual payment of costs to the petitioner, respondents are at liberty to deposit the costs in the Appeal Court within a period of four weeks from today, to which the petitioner is granted unconditional liberty to withdraw the same.

9. Further, Appeal Court to dispose of Civil Appeal No.218/2000 as expeditiously as possible and in any case within a period of 6 months from today. All parties to co-operate with the Appeal Court in the matter of expeditious disposal of the appeal.

10. Rule is made absolute in the aforesaid terms.

11. All concerned to act on the basis of an authenticated copy of this order.

(M.S.SONAK, J.)