

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7728 OF 2019

Mr. Mehboob Haji Issaq	...	Petitioner
Versus		
Mr. Arjun Morarji Ruparel		
And Others	...	Respondents

.....

Mr. Asif Shaikh i/b Khan Javed Akhtar for the Petitioner.
Ms. Firdaus Moosa i/b Mr. Prakash Mahadik for Respondent Nos.1 and 2.

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CORAM : S.C. GUPTE, J.

DATE : 13 AUGUST 2019

P. C. :

. Heard learned Counsel for the parties.

2 The writ petition challenges an order passed by the Appellate Bench of Small Causes Court at Mumbai on an application for condonation of delay in filing an application for setting aside an order passed dismissing an application for condonation of delay in filing the appeal. The delay in filing the appeal was of twenty days. The application for setting aside the order dismissing the application for condonation of delay in filing the appeal was dismissed for want of prosecution. The present application was taken out for setting aside that order. There was a delay of fourteen days in taking out the

application. The delay was sought to be explained by filing a medical certificate showing ill-health of the Applicant. The medical certificate produced in support of the application shows that the Applicant was advised bed rest for fifteen days. It appears that without offering any comment on the correctness or otherwise of the medical certificate, the Appellate Bench has rejected the application, observing *inter alia* that the Applicant was generally guilty of delaying the matter. Various observations are made in the order, which reflect on the Applicant's conduct in the matter including his refusal to comply with the order of payment of interim compensation. What is, however, singularly missing is the consideration as to whether the Applicant had any reasonable excuse in filing his last MARJI application, in which the impugned order came to be passed, only after a delay of fourteen days. The Petitioner relied on a medical certificate and there is nothing on record for questioning the authenticity or correctness of that medical certificate. The application for condonation of delay thus deserved to be allowed. Considering, however, the conduct of the Petitioner, there could at the most be a case for saddling him with costs.

3 Considering the facts of the case, it is accordingly in the interest of justice that the Petitioner's application for condonation of delay of fourteen days in presenting his MARJI application for setting aside the dismissal order passed on his earlier MARJI application should be granted, subject to payment of costs. It is also equally in the interest of justice that after setting aside the dismissal order, original MARJI

application should be taken up for hearing expeditiously and disposed of and if, in the event the application is allowed, the appeal itself should be taken up for admission and disposed of expeditiously. The matter is lingering for quite sometime and the plaintiff has been unable to enjoy the fruits of the decree on account of the obstruction caused by the Applicant.

4 In the premises, the following order is passed :

: O R D E R :

i)The impugned order passed by the Appellate Bench of Small Causes Court at Mumbai, is set aside ;

ii) MARJI Application of the Petitioner, namely, MARJI Application No.233 of 2018, is allowed, subject to payment of costs quantified at Rs.50,000/-. Costs to be paid to the Respondents as condition precedent within a period of three weeks from today ;

iii) The Small Causes Courts at Mumbai shall take up MARJI Application No.167 of 2017 filed in Appeal (St.) No.759 of 2017, expeditiously and dispose of the same within a period of **four** weeks from today ;

iv) The ad-interim stay operating in favour of the Petitioner shall continue to operate, subject to

payment of compensation at the rate of Rs.5,000/- per month from September 2018 onwards regularly from time to time ;

v) The writ petition is disposed of accordingly.

(S.C. GUPTE, J.)