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

WRIT PETITION NO.6331 OF 2019

Maruti Ramchandra Raut ... Petitioner
Versus
Abasaheb Namdeo Jagtap and Anr. ... Respondents

Mr. A. M. Pungliya, for the Petitioner.

Mr. Jaydeep Deo, for the Respondent No.1.

CORAM : REVATI MOHITE DERE, J.

DATE : 17th JANUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the order dated 2nd November, 2018, passed by the learned 6th Additional Small Cause Judge and Joint Civil Judge Senior Division, Pune, below Exhibit – 1 in Miscellaneous Application No.514 of 2015, by which, the respondent no.1's (original plaintiff) application for setting aside the dismissal order dated 25th March, 2015 and restoration of Special Civil Suit No.1276 of 2012 was allowed, subject to the payment of costs of Rs.10,000/-.

3. Learned Counsel for the Petitioner submits that the reasons given by the Respondent no.1 (original plaintiff) why he did not remain present at the time of the hearing of the suit are unacceptable, having regard to the record. He submits that the suit ought not to have been restored to its original file.

4. Learned Counsel for the Respondent no.1 opposed the Petition. He submits that the suit was dismissed for default on 25th March, 2015 and there was only 1 day's delay in filing the restoration application. He submitted that the said delay was condoned and after hearing the parties the dismissal of the suit was set aside and the Special Civil Suit was restored back to its original file.

5. Perused the papers, including the impugned order. The Respondent No.1 (original plaintiff) had filed Special Civil Suit No.1276 of 2012, for cancellation of the sale deed, declaration and permanent injunction. According to the learned counsel for the respondent no.1 (plaintiff), his counsel had informed him that it was not necessary to remain present on each and every date and had disclosed to him that the Suit was fixed for hearing on 15th April, 2015. It appears that the advocate for the respondent no.1 (plaintiff), had informed the respondent no.1 that he is not

in a position to remain present before the Court on the said day and had asked the respondent no.1 to remain present before the Court on the said date. It appears that the respondent no.1 (plaintiff), went to the Court only to learn that his suit was dismissed for default on 25th March 2015. Pursuant thereto, the respondent no.1 (plaintiff), immediately applied for a certified copy of the order which was received by him on 23rd April, 2015 and immediately filed an application for setting aside the dismissal order dated 25th March, 2015 and for restoring of the suit being Special Civil Suit No.1276 of 2012 along with an application for condonation of delay of one day. The learned Judge condoned the delay, for the reasons set out in the application. Thereafter, the learned Judge allowed the application (Exhibit – 1) and set aside the order dismissing the suit for default and restored the Special Civil Suit back to its original file. A perusal of paras 8 and 9 of the impugned order shows that the learned Judge has rightly after considering the material on record allowed the respondent no.1's (plaintiff) application and set aside the dismissal order and restored the Special Civil Suit to its original file, subject to the costs of Rs.10,000/-. It is not in dispute that the said costs has been deposited. It is also not in dispute that the evidence of the plaintiff has commenced and the matter is posted for cross examination.

6. No infirmity can be found in the impugned order.

7. The Petition is accordingly dismissed and disposed of as such.

REVATI MOHITE DERE, J.