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

WRIT PETITION NO.7982 OF 2016

Hiru Pandurang Pemare
since deceased through legal representative
Sambhaji Hiru Pemare ... Petitioner

Versus
Vasant Kamalu Pemare and Ors. ... Respondents

Mr. Chandrakirti Zende i/b Mr. J. B. Kocheta, for the Petitioner.

Mr. A. P. Ranade, for the Respondents.

CORAM : REVATI MOHITE DERE, J.

DATE : 17th FEBRUARY, 2020

P.C. :

1. Heard learned counsel for the parties.
2. By this Petition, the Petitioner has impugned the order dated 18th January, 2016, passed by the learned District Judge - 2, Raigad – Alibag, below Exhibit – 1 in Civil Miscellaneous Application No.119 of 2014, by which, the petitioner’s application seeking condonation of delay of 1 year 3 months and 2 days in filing an appeal against Judgment and Decree dated 4th April, 2013, in R.C.S. No.137 of 2011, was rejected.

3. Learned Counsel for the petitioner submits that the petitioner is the original plaintiff who had filed a Suit being Regular Civil Suit No.137 of 2011 in the Court of the learned Civil Judge, Junior Division, Karjat, District – Raigad. He submits that the said suit was dismissed by the trial Court vide Judgment and Order dated 4th April, 2013. According to the learned counsel for the petitioner, the petitioner could not file an appeal against the Judgment and Decree, at the earliest having regard to his age and the fact that he was unaware of the dismissal of the suit. Learned Counsel submits that the petitioner became aware of the dismissal of the suit on 10th August, 2014 and on learning of the said dismissal filed an appeal in the District Court. Learned Counsel for the petitioner states that the delay is neither deliberate nor intentional.

4. Learned Counsel for the Respondents submitted that no interference is warranted in the impugned order, inasmuch as, the petitioner was well aware of the dismissal of the suit on 4th April, 2013 itself. Learned Counsel relied on the reply filed by the respondents – original defendants, in the application filed below Exhibit – 1, seeking condonation of delay in filing the appeal.

5. Perused the papers including the impugned order. The petitioner is the original plaintiff who had filed a Suit being Regular Civil Suit No.137 of 2011 in the Court of the learned Civil Judge, Junior Division, Karjat, District – Raigad. The Respondents are the original defendants, who appeared in the said suit. After evidence was led, the trial Court vide Judgment and Order dated 4th April, 2013, dismissed the said suit. According to the petitioner, on 10th August, 2014, he went to his Advocate's office alongwith his grandson, where he was told that the suit was dismissed on 4th April, 2013. He submits that the petitioner took certified copies of the said Judgment and Decree and thereafter filed the aforesaid appeal along with an application Exhibit – 1 seeking condonation of delay of 1 year, 3 months and 2 days. Although learned counsel for the respondents - original defendants relied on the roznama to show that the petitioner was present when the suit was dismissed, it *prima facie* appears that there was indeed some discrepancy with regard to the presence of the petitioner, inasmuch as, there was some mark on the word “नेर” thereby showing that the petitioner was not present.

6. Be that as it may, having regard to the age of the respondent no.2 which is more than 70 years and also having regard to the fact that sufficient cause has been shown by the petitioner for filing the appeal late,

the impugned order dated 18th January, 2016, passed by the learned District Judge - 2, Raigad – Alibag, below Exhibit – 1 in Civil Miscellaneous Application No.119 of 2014, is quashed and set aside, subject to the petitioner paying costs of Rs.10,000/- to the Respondents, within three weeks from today.

7. Since the delay has been condoned, Civil Appeal filed by the petitioner is restored back to its original file. The learned Judge to consider the said appeal, on its own merits, in accordance with law, uninfluenced by the order passed herein-above.

8. Petition is disposed of on the aforesaid terms. All contentions of the parties are kept open.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.