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

WRIT PETITION NO.8375 OF 2017

Malkarsidha father Madgonda Pujari	...Petitioner
Versus	
Shamrao father Anapa Pujari and Anr.	...Respondents

Mr. S. S. Inamdar, for the Petitioner.

Mr. P. P. Kulkarni, for the Respondents.

CORAM : REVATI MOHITE DERE, J.

DATE : 30th JANUARY, 2020

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal at the stage of admission.
Mr.Kulkarni, waives service on behalf of Respondents.
3. By this petition, the petitioner has impugned the order dated 1st April, 2017, passed by the learned District Judge – 4, Solapur, below Civil Miscellaneous Application No.68 of 2016.

4. Perused the papers. The petitioner is the original plaintiff who had filed a suit for partition, possession, perpetual injunction and mense profit, as against the respondents (defendants) in the year 2005. The said Civil Suit was numbered as Regular Civil Suit No.962 of 2005. The Respondents/Defendants appeared in the said suit and contested the same. After evidence was led and the parties were heard, the petitioner's suit was dismissed by the learned 5th Joint Civil Judge, Junior Division, Solapur vide Judgment and Order dated 29th September, 2010. Being aggrieved by the said Judgment and Order dated 29th September, 2010, the petitioner filed an appeal in the District Court, Solapur alongwith Civil Miscellaneous Application No.8 of 2011 (for condonation of delay of three days). The said Civil Miscellaneous Application No.8 of 2011 was allowed by the learned District Judge – 1, Solapur vide order dated 20th July, 2011, subject to the petitioner depositing costs of Rs.300/-, within 15 days from the date of order. The order records that if the said amount is not paid, the application shall automatically stand rejected and if the said costs was deposited within 15 days, the appeal was to be registered. The petitioner thereafter filed another Civil Application being Civil Application No.68 of 2016 and stated therein that there is delay in payment of costs/fine and as such the same be condoned and the petitioner be permitted to deposit the said amount in the registry and the appeal be numbered. In the said application, the petitioner

has set out the reasons for not being able to deposit the said amount. It is stated that as he was not getting agricultural produce, he was constrained to go to Andhra Pradesh, where he worked for about 4 to 5 years. The petitioner has stated that pursuant thereto, he could not contact his advocate, resulting in non-deposit of the said amount.

5. Learned Counsel for the Respondents opposes the petition and submitted that no interference is warranted in the impugned order. He submitted that the petitioner was prosecuting another Suit during the said period i.e. in the year 2014.

6. This Court vide order dated 28th January, 2019, had directed the petitioner to deposit an amount of Rs.5,000/- in this Court and notice was issued to the respondents, returnable after four weeks. Issuance of notice to the respondents was on the condition, that the petitioner deposits Rs.5,000/-. It is not in dispute that the petitioner has deposited the said amount of Rs.5,000/- in the Registry of this Court. From the perusal of the application, it appears that the petitioner is an agriculturist and had gone to Andhra Pradesh for his livelihood, although it appears that he was present in another suit in the year 2014. Be that as it may, a perusal of the application shows that the petitioner has shown sufficient cause for restoration of his appeal. It

appears that the petitioner is an agriculturist and had gone to Andhra Pradesh for his livelihood. In the facts, the Appellate Court ought to have permitted the petitioner to deposit the amount and register the appeal, having regard to what is stated aforesaid and in the interest of justice. The petitioner has also deposited Rs.5,000/- as directed by this Court vide order dated 28th January, 2019.

7. Accordingly, the impugned order dated 1st April, 2017, passed by the learned District Judge – 4, Solapur, below Civil Miscellaneous Application No.68 of 2016, is quashed and set aside.

8. The Petitioner is permitted to deposit Rs.300/- in the Registry of the Appellate Court, within three weeks from today. On depositing the said amount, the appeal filed by the petitioner be numbered. If the said amount is deposited as directed, the Appellate Court is requested to hear the appeal as expeditiously as possible and preferably within 6 months from the date of registration of the Appeal.

9. The Respondent No.1 is permitted to withdraw the amount of Rs.5,000/- deposited in this Court by the Petitioner, on furnishing proof of his identity.

10. The Petition is allowed in the aforesaid terms and is accordingly disposed of. Rule is made absolute in the aforesaid terms.

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

REVATI MOHITE DERE, J.