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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.474 OF 2019**

Sunil Baran Roy

....Applicant.

V/s

Tokesh Shyam Rao Motghare

.....Respondent

Mr. Mahesh Menon i/b Mahesh Menon & Co. for the Applicant.

Ms. Minal Chandnani i/b Jaiwant S. Chandnani for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 2, 2021

P.C.:-

1] Heard respective Counsels.

2] The present Revision Application is by the Plaintiff in Special Civil Suit No.1028 of 1994 invoking provisions of Order 9 Rule 4 of the CPC seeking restoration of the suit as same was dismissed under Order 9 Rule 3 of the CPC as parties to the suit have failed to appear. The suit was at the stage of recording of evidence.

3] Facts necessary for deciding the Revision Application are as under:-

4] The suit is initiated under Section 6 of the Specific Relief Act by the Applicant on 28/10/1994 which was transferred to Kalyan Court and thereafter to Ulhasnagar Court. The Applicant thereafter received Written Statement on 7/6/1996 and has tendered his evidence in the form of affidavit in chief on 18/9/2002. As the Applicant and other parties to the suit consistently remained absent, Trial Court on 29/3/2014 expunged the evidence of the Applicant/Plaintiff and on 4/4/2014 dismissed the suit for want of prosecution under Order 9 Rule 3 of the CPC.

5] Under Rule 4 of Order 9 of the CPC, application for recalling the order of dismissal of suit came to be moved on 13/8/2014 alongwith the prayer for condonation of delay of 78 days.

6] Vide order impugned, the said prayer of the Applicant for condonation of delay of 78 days came to be rejected on 14/1/2019. As such this Petition.

7] Amongst other, so as to pursue the case for establishing bonafide

grounds for not attending the proceedings before the Trial Court, learned Counsel would press in the issue of ill-health of the Applicant so also of his lawyer. He has relied on certain medical documents. According to him, fact that the suit was pending since 1994 and in 2014 same was dismissed at the stage of evidence needs to be appreciated, as there was every intention on the part of the Applicant to pursue the suit bonafide.

8] The learned Counsel for Respondent while opposing the prayer for condonation of delay would invite attention of this Court to the very conduct of the Applicant viz. attending various other proceedings during the very same period when the suit was dismissed. It is also pointed out that the Applicant is attending the other court proceedings and has not given correct address / changed address as was mandatory. According to her, there was intention of deliberate default on the part of the Applicant. That being so, since Applicant was negligent in pursuing the suit proceedings, no sufficient cause so as to condone the delay of 78 days could be made out. She has therefore sought for dismissal of the Revision Application.

9] Considered rival submissions.

10] The fact that suit was initiated in 1994 and was dismissed in 2014 can be inferred from the record.

11] It appears that the suit was at the stage of recording of evidence as the Applicant has tendered his affidavit of examination-in-chief.

12] No doubt, it can be inferred from the court proceedings viz. Roznama, evidence of the Applicant recorded on the issue of condonation of delay and other material that the Applicant was negligent in pursuing the suit proceedings. However, issue as regards lawyer of the Applicant was indisposed and there was no proper communication from the lawyer as regards attending the suit proceedings cannot be lost sight of. There is delay of only 78 days which is sought to be explained on the issue of ill-health of the Applicant having regard to his ill-health and also failure of the lawyer to attend the proceedings because of his ill-health.

13] In the aforesaid backdrop, in my opinion, court below should

have condoned the delay of 78 days by putting the Applicant to certain stringent conditions. As such, case for showing indulgence is made out.

14] Revision Application is allowed. Order below Exhibit-1 passed by Civil Judge, Junior Division Ulhasnagar in Civil M.A. No.75 of 2014 passed on 14/1/2019 is quashed and set aside. For the reasons stated above, delay of 78 days in preferring application for condonation of delay is condoned and the application stands allowed subject to payment of costs of Rs 25,000/- to be deposited in the Trial Court within a period of two weeks from today, which the non-applicant/defendant will be entitled to withdraw.

15] Applicant within aforesaid period shall also furnish his registered address and further undertakes before the court that in case of change of address he shall continue to furnish the said address regularly. Any unnecessary adjournments at the behest of the Applicant shall be followed with order of exemplary costs on the Applicant/Plaintiff in the aforesaid proceedings.

16] Both the parties jointly request that the suit proceedings be expedited. Trial Court as such is directed to conclude the entire proceedings in any case within a period of six months from today. Parties hereto agree that they shall appear before the Trial Court on 8/3/2021.

17] Revision Application is disposed of in the aforesaid terms.

(NITIN W. SAMBRE, J.)