

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

WRIT PETITION NO.6615 OF 2019

Mr. Vasant Sitaram Sawant

..Petitioner

Versus

Mr. Anil M. Shinde and Ors.

..Respondents

Mr. Rahul Singh i/by Legal Catalyst, for the Petitioner.

Mr. Bhushan Walimbe, for the Respondent No.1.

CORAM : NITIN W. SAMBRE, J.

DATE : 16th FEBRUARY, 2022

PC.

1. The petitioner suffered a money decree in Special Civil Suit No.20 of 2003 on 13th June, 2005 which was subject matter of First Appeal Stamp No.26213 of 2007 preferred under Section 96 of the CPC before this Court.

2. The said appeal since was preferred at belated stage, the delay was ordered to be condoned subject to payment of cost vide order dated 13th June, 2008. Since the cost as was ordered was not deposited, the consequences were the appeal came to be dismissed.

3. The petitioner/judgment debtor took out proceedings for restoration of appeal. However, in view of change in pecuniary jurisdiction, the matter came to be transferred to the learned District Judge. As the order of dismissal was passed by the High Court, the

petitioner made to understand that he should first seek restoration of appeal from this Court and then appeal can be decided on merit. In the aforesaid background, petitioner took out Misc. Application No.42 of 2014 before the Appellate Court for restoration of the Appeal. The said application came to be dismissed, as the same was not attended.

4. In the aforesaid background, the submissions of learned counsel for the petitioner are, the statutory remedy of appeal is very much available to the petitioner/judgment debtor which he has rightly invoked. He would claim that he is willing to deposit cost as was ordered, however, direction of restoration of appeal be issued to the learned District Judge to decide the appeal expeditiously.

5. Counsel for the respondents would urge that the petitioner be put to strict conditions and thereby permit the petitioner to withdraw the amount under the decree deposited by the judgment debtor in the Executing Court. He has invited my attention to the order dated 2nd August, 2017 so as to submit that the appeal is already restored.

6. In the aforesaid background, in my opinion, appellant deserves to be granted one more chance subject to condition that the respondents/decreed holders shall permit to withdraw the amount deposited in the Executing Court subject to an undertaking that in case, if the appeal of the petitioner is allowed, he shall re-

deposit the said amount before the Executing Court within a period of six weeks from the date of passing of such decree with accrued interest till the date of deposit with 6% interest per annum.

7. Since the statement is made by counsel for the respondents/decreed holders on instructions, the same is accepted as undertaking to this Court.

8. In the aforesaid background, order impugned dated 21st December, 2018 is hereby set aside.

9. The statement made by the petitioner that he shall conduct the suit proceedings regularly without any adjournment is accepted.

10. Learned District Judge as such is directed to proceed with hearing of the proceedings.

11. As such, petition stands allowed in the above terms.

[NITIN W. SAMBRE, J.]