

BDP-SPS-TAC

BHARAT
DASHARATH
PANDIT

Digitally signed
by BHARAT
DASHARATH
PANDIT
Date: 2022.04.12
11:07:28 +0530

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 719 OF 2022**

SACHIN SHAHAJI SHINDE

....Petitioner

V/s

SHAHAJI MAHADEV SHINDE

AND ANR.

.... Respondents.

Mr. Amit B. Thorat i/b Ashok B. Tajane for the Petitioner.

Ms. Manisha Devkar for the Respondent.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 07, 2022

P.C.:-

1] Admittedly, Judgment impugned dated 7th September, 2018 is passed in the absence of present Petitioner/Plaintiff before the Appellate Court. It appears that notice, though was repeatedly offered, since the Petitioner was not present, same was not delivered to him. Such inference can be drawn on the plain reading of the endorsement made by the postman on the envelope in which notice was forwarded to the Petitioner which is produced at pages 176 and 177.

2] In the aforesaid backdrop, having regard to the law laid down by this Court in the matter of *Udhav Baliram Adawale vs. Babruwan Papanarsh Gaikwad*, reported in 2017 SCC OnLine Bom 6865, Petitioner has made out a case for showing indulgence.

3] Petitioner assures that on the next date, he shall appear before the Appellate Court and cooperate in expeditious disposal of the said Appeal.

4] This Court expects the Appellate Court to decide the said Appeal expeditiously and in any case within a period of three months from today. As such, Judgment impugned dated 7th September, 2018 is quashed and set aside. However, Petitioner shall not be drawing any benefit out of the order passed below Exhibit-5 which was questioned in the aforesaid Appeal. To be more precise, till Appeal is decided, parties to the Petition shall be governed by the conclusion drawn in the impugned judgment dated 7th September, 2018.

5] Petition stands disposed of in the aforesaid terms. Needless to clarify that Appeal be decided without being influenced by the findings recorded by this Court

(NITIN W. SAMBRE, J.)