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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.1878 OF 2022
WITH
INTERIM APPLICATION NO.3769 OF 2020**

Director of Income-Tax (Inv.) and Ors. ... Petitioners

V/s.

Dinesh L. Salvi & Ors. ... Respondents

Mr. Anil C. Singh, Advocate General a/w Mr. Aditya Thakkar and Mr. Pranav Thakur i/by A.K. Saxena, Advocates for the Petitioners.

Mr. Arun H. Mehta a/w Ms. Priyanka Pawar i/by Mr.Akshar Laws, Advocates for Respondent No.1(a), 2 and 3.

CORAM: NITIN W. SAMBRE, J.

DATE: MARCH 25, 2022

P.C.:-

1] Mr. Anil Singh, learned Additional Solicitor General of India appears for the Petitioners and Mr. Arun Mehta, learned Counsel appears for Respondents/decreed holders.

2] The factual background necessary for deciding the present Petition is as under:-

3] Summary suit came to be initiated by the Respondents/decreed

holders against the Petitioners which was decreed on 18th March, 2016. Since the decree passed was an ex parte decree, Notice of Motion was taken out to set aside the same, which was dismissed on 4th July, 2019 for default. For restoration of the said Notice of Motion for setting aside ex parte decree, another Notice of Motion was taken out which was rejected vide impugned order dated 21st February, 2021 by the Ad-hoc Judge, City Civil Court, Greater Bombay.

4] Mr. Singh would urge that Petition is by Revenue, seeking restoration of earlier Notice of Motion for setting aside ex parte decree on the ground that on the date when the impugned order was passed, thereby dismissing the earlier Notice of Motion, there was heavy rains and for personal reasons of the lawyer he was unable to attend the hearing of the said Notice of Motion.

5] While strenuously resisting the said claim, Mr Mehta would invite attention of this Court to the pleadings in the present Writ Petition, in support of his submission that hardly any grounds are mentioned therein so as to establish the case for setting aside of the

impugned order. He would claim that there is an alternative remedy available to the Petitioners to approach the very same Court for recalling the order. As such, he has sought dismissal of the Petition. Apart from above, he would claim that very conduct of the Petitioners does not call for exercising equitable powers of this Court in favour of the Petitioners, particularly when decree is a money decree.

6] I have appreciated the aforesaid submissions.

7] It appears that interest of the Respondents/decreed holders is already protected as 50% of the amount under the decree is already deposited. Apart from above, if we consider the cause cited, in my opinion, default of a lawyer should not be considered to the detriment of a litigant and in support of the said proposition, reliance can be placed on the judgment of the Supreme Court in the matter of *Rafiq & Anr vs Munshilal & Anr* reported in **1981 AIR 1400**.

8] In the backdrop of aforesaid observations, in my opinion, impugned order dated 21st February, 2020 calls for interference under

extraordinary jurisdiction. As such, impugned order dated 21st February, 2020 is hereby quashed and set aside. Notice of Motion No.3211 of 2019 stands allowed, subject to payment of costs of Rs 5,000/- to be deposited before the City Civil Court, Greater Bombay within a period of six weeks from today, which the Respondents/decreed holder shall be entitled to withdraw.

9] As such, Notice of Motion for setting aside ex parte decree stands restored to the file which be decided by the Court below in accordance with law.

10] Petition is allowed in the aforesaid terms. As a consequence, Interim Application taken out therein does not survive and same stands disposed of.

11] There shall be no coercive action for a period of 10 weeks from today. However, this will not preclude the Petitioners from claiming interim relief in the matter.

(NITIN W. SAMBRE, J.)