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

WRIT PETITION 7241 OF 2018

Shri Sambhaji Tatoba Deshmukh and Ors. ... Petitioners

Versus

Grampanchayat Farnewadi
through its Sarpanch and Ors. ... Respondents

Mr. Akshay A. Kulkarni for the Petitioners.

Mr. Kedar P. Lad i/by P. D. Dalvi for the Respondent 1.

Ms. V. S. Nimbalkar, AGP for the State-Respondents 2 to 3.

CORAM: ROHIT B. DEO, J.

DATE : 13th JULY, 2022

P.C. :-

. The petitioners are the plaintiffs in Regular Civil Suit 175 of 2008 brought for declaration and perpetual injunction.

2. It appears that the plaintiffs were permitted by the learned Trial Court to amend the pleadings. The plaintiffs failed to amend the pleadings and the suit as such was fixed on 14th January, 2014 for passing appropriate order.

3. In view of the festival 'Makar Sankranti', Court holiday was declared on 14th January, 2014. It further appears that a composite daily board for matters listed on 14th January, 2014 and 15th January, 2014 was prepared and the Civil Suit came to be dismissed since the plaintiffs did not attend the Court on 15th January, 2014.

4. The case of the plaintiffs in short is that it was only on 11th

February, 2014 that the plaintiffs made a grievance with their counsel that they have not been able to ascertain the next date and upon enquiry, the counsel realized that the suit was dismissed on 15th January, 2014. Certain time was consumed in obtaining certified copy and thereafter the application was moved. Since, according to the plaintiffs the limitation of 30 days is required to be calculated from the date of knowledge, no separate application for condonation of delay was preferred.

5. The learned Trial Judge was pleased to reject the application seeking restoration of suit by cryptic order dated 19th January, 2016. The first reason recorded is that the application seeking restoration is time barred. The other reason recorded is that there was no justification for the failure to attend the Court on 15th January, 2014. Notably, while one of the plaintiffs examined himself in support of the application and was not cross-examined, there is no reference or consideration in the order of the Trial Court to the evidence recorded.

6. The plaintiffs preferred Miscellaneous Civil Appeal 14 of 2016.

7. The Appellate Court has not cared to look into the matter on merits and has dismissed the Miscellaneous Civil Appeal only on the ground that the application seeking restoration was time barred.

8. I have no doubt in my mind that the approach of the Courts below is pedantic. It is not in dispute that 14th January, 2014 was declared holiday. Considering the evidence adduced by the plaintiffs, a case was indeed made out for condoning the delay in seeking restoration. It is not as if the delay was enormous. The fact that the

plaintiffs did not prefer a separate application seeking condonation of delay on the assumption that the limitation is required to be calculation from the date of knowledge, is irrelevant. Nothing prevented the learned Trial Court from asking the plaintiffs to prefer such an application. Indeed, even without a formal application, discretion to restore the suit could have been exercised. The approach of the Appellate Court is equally hyper technical and cannot be countenanced.

9. The plaintiffs have already deposited the amount of Rs.5,000/- (Rupees Five Thousand Only) in this Court as directed by order dated 1st March, 2021. The said amount shall be paid to the defendant-Grampanchayat as cost. Subject to the payment of cost as aforesaid, the orders impugned are set aside. Civil Suit is restored to file.

10. Learned Trial Court to expedite the disposal of the suit.

[ROHIT B. DEO, J.]