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

WRIT PETITION NO. 4386 OF 2022

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Mehbub Hasan Sayyad ..Petitioner
vs.
Josef Alas Ashtamkar and ors. ..Respondents

Mr. Irfan A. Shaikh for petitioner.
Smt. M. S. Bane, AGP for State.

CORAM : M. S. KARNIK, J.

DATE : JULY 15, 2022.

P.C. :

1. Heard learned counsel for the petitioner.
2. This writ petition under Article 227 of the Constitution of India challenges an order dated 27.10.2021 (Exhibit 'A') passed by the Additional Commissioner, Konkan Division rejecting the application for restoration dated 13.10.2021 filed by the petitioner as not maintainable.
3. The facts are briefly stated. The petitioner filed R.T.S. Revision No. 783 of 2018 before the Additional Commissioner challenging the order dated 12.09.2018

passed by the Additional Collector in R.T.S. Appeal No. 10 of 2018 in respect of the revenue entries pertaining to Gat No. 83. The said Revision was dismissed in default by the Additional Commissioner on 17.09.2019. Thereafter, the petitioner filed an Application under sub-section (3) of Section 232 of the Maharashtra Land Revenue Code, 1966 (hereafter "the Code", for short) for setting aside the order dismissing the Revision in default (first dismissal for default). By an order dated 14.08.2020, the Additional Commissioner for the reasons recorded therein restored the Revision to file.

4. At the time of hearing the Revision, the petitioner failed to remain present on 15.02.2021, 16.03.2021, 27.04.2021, 22.06.2021, 02.08.2021 and 01.09.2021 and therefore, the Additional Commissioner by an order dated 01.09.2021 dismissed the Revision Appeal in default (second dismissal for default). The petitioner filed restoration application before the Additional Commissioner. On 15.10.2021, by the impugned order, the Additional Commissioner rejected the restoration application on the

ground that in view of the provisions of the Code, the Additional Commissioner is not empowered to entertain the application for restoration, as the second application for restoration of Revision which once was dismissed in default and restored, is not maintainable.

5. Learned counsel for the petitioner invited my attention to the provisions of Section 232 of the Code. He submits that there is no embargo on the revisional authority for entertaining second restoration application and such an application is maintainable.

6. Learned AGP on the other hand pointed out that under sub-section (4) of Section 232 of the Code, the petitioner's remedy is to file an Appeal against the impugned order to the authority to whom an appeal lies from an original order passed by such officer. She further submits that having restored the matter once, it is not open for the petitioner to make an application a second time for setting aside the order dismissing the revision in default.

7. Heard.

8. In answer to the question posed for consideration,

whether the application for restoration is maintainable, it would be apposite to first refer to Section 232 of the Code which reads thus :-

"232. Hearing in absence of party :

(1) If on the date fixed for hearing a case or proceeding, a Revenue Officer or Survey Officer finds that summons or notice was not served on any party due to the failure of the opposite party to pay the requisite process fees for such service, the case or the proceeding may be dismissed in default of payment of such process fees.

(2) If any party to a case or proceeding before the Revenue Officer or Survey Officer does not appear on the date fixed for hearing, the case may be heard and determined in his absence or may be dismissed in default.

(3) The party against whom any order is passed under sub-section (1) or (2), may supply within thirty days from the date of such order to have it set aside on the ground that he was prevented by any sufficient cause from paying the requisite 'process fees' for service of a summons or notice on the opposite party or from appearing at the hearing and the Revenue Officer or Survey Officer may, after notice to the opposite party which was present on the date on which such order was passed and after making such inquiry as he considers necessary set aside the order passed.

(4) Where an application filed under sub-section (3) is rejected, the party aggrieved may file an appeal to the authority to whom an appeal lies from an original order passed by such officer.

(5) Except as provided in sub-section (4) or except where a case or proceeding before any such officer

has been decided on merits, no appeal shall lie from an order passed under this Section.”

9. Though there is substance in the contention of learned AGP that under sub-section (4) of Section 232 of the Code, the petitioner has a remedy of filing an appeal against the impugned order to the next higher authority to whom the appeal lies, in my opinion, as the Additional Commissioner has simply refused to even entertain the restoration application being not maintainable on an erroneous reading of Section 232 of the Code, I proceed to entertain the present writ petition instead of relegating the petitioner to the remedy under sub-section (4) of Section 232 of the Code.

10. In view of sub-section (2) of Section 232 of the Code, the petitioner who is a party to the proceeding before the Additional Commissioner, did not appear on the dates fix for hearing, hence, the Additional Commissioner proceeded to dismiss in default the revision earlier on 17.09.2019 (first dismissal in default). Thereafter, the Revision before the Additional Commissioner was restored under sub-section (2) of Section 232 of the Code and posted for hearing.

However, on the date fixed for hearing, the petitioner did not remain present, hence the appeal came to be dismissed for default once again on 01.09.2021. The Additional Commissioner was of the opinion that there is no provision in the Code to restore the proceeding when it is dismissed in default for a second time.

11. In my opinion, the Additional Commissioner misconstrued the provisions of Section 232 of the Code. Once the case is dismissed for default in the absence of the party under sub-section (2) of Section 232 of the Code, the party against whom the order is passed under sub-section (1) or (2) of Section 232 of the Code can apply for having it set aside on the ground that he was prevented by any sufficient cause as provided under sub-section (3) of Section 232 of the Code. While restoring the appeal on the earlier occasion by the order dated 14.08.2020, the Additional Commissioner exercised his powers under sub-section (3) of Section 232 of the Code. The matter then has to be proceeded for hearing and if on the date fixed for hearing, the Revision applicant does not appear, the

Additional Commissioner has to still proceed in terms of sub-section (2) of Section 232 of the Code. The order dated 01.09.2021 (second order dismissing the case for default) has to be then regarded as an order passed under sub-section (2) of Section 232 of the Code. There is nothing prescribed in the Code that such an application for restoration of a matter under sub-section (3) of Section 232 of the Code is not maintainable only because the case was earlier dismissed for default and subsequently restored. The impugned order therefore calls for interference. The application for restoration dated 13.10.2021 at Exhibit 'G' is maintainable.

12. In my opinion, the notice to the private respondents in this writ petition is not necessary, as what is under challenge in this writ petition is an order passed by the Additional Commissioner rejecting the application for restoration as not maintainable.

13. The impugned order dated 27.10.2021 passed by the Additional Commissioner, Konkan Division, which is at Exhibit 'A', is quashed and set aside.

14. The Additional Commissioner may decide the restoration application, which is at Exhibit 'G' in R.T.S. Revision Application No. 722 of 2019, on its own merits and in accordance with law.

15. The petitioner to appear before the Additional Commissioner, Konkan Division on 01.08.2022 at 11.00 a.m. along with copy of this order.

16. Learned AGP to inform the Additional Commissioner, Konkan Division.

17. I may not be understood to have expressed any opinion on the merits of the application for restoration.

18. The writ petition is allowed in the above terms. There shall be no order as to costs.

(M. S. KARNIK, J.)