

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4029 OF 2020

Bharatbai Hanumanth Hivrale

...Petitioner

Versus

Baliram Maroti Jadhav And Others

...Respondents

Mr. A.G. Vasmatkar h/f. Mr. U.B. Bilolikar, Advocate for petitioner.
Mr. Sachin S. Panale, Advocate for respondents No. 1 to 3.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 8th MARCH, 2023

ORDER :

1. By this petition filed under Article 227 of the Constitution of India, petitioner, original appellant challenges the order dated 28.11.2019 passed by learned District Judge-1, Biloli, below Exhibit-1 in Miscellaneous Civil Application (RJE) No. 1/2019. The petitioner/appellant moved this application for restoration of appeal bearing Regular Civil Appeal No. 35/2019 which was dismissed on 06.07.2015.

2. Heard the learned advocate for the petitioner and learned advocate for the respondents. Perused the documents placed on record.

3. It appears from the record that the date on which the appeal was dismissed, according to the petitioner his advocate was suffering from cardio respiratory disease and he had gone for angioplasty at Hyderabad. Though, this ground was considered by the Appellate Court, it has brushed it aside saying that no medical certificates were placed on record by the petitioner.

4. The approach of the Appellate Court is too technical and it has lost sight of the fact that by dismissing the appeal in default fair opportunity of contesting the appeal on merits is denied to the petitioner. Such approach cannot be sustained. In the result, writ petition is allowed.

5. The impugned order passed below Exhibit-1 in Miscellaneous Civil Application (RJE) No. 1/2019 is quashed and set aside. Miscellaneous Civil Application (RJE) No. 1/2019 is hereby allowed.

6. Regular Civil Appeal No. 35/2019 is restored on the file of Appellate Court. The Appellate Court shall decide the same on merits, in accordance with law after hearing the parties, within six weeks from today.

7. The petitioner is said to have deposited Rs. 15,000/- to show his *bonafides*. In addition, the petitioner shall deposit Rs. 10,000/- in the Appellate Court. Respondents will be entitled to withdraw total cost of Rs. 25,000/-.

[NITIN B. SURYAWANSHI, J.]