

R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8054 OF 2022

Ashok Bhimgonda Patil @ Tambe

.. Petitioner

Versus

Yeshwant Piraji Kole

.. Respondent

-
- Mr. Chetan G. Patil i/by Mr. Mandar G. Bagkar for Petitioner
 - Mr. V.S. Kapse i/by Mr. Veerdhawal Deshmukh for Respondent
-

CORAM : MILIND N. JADHAV, J.

DATE : FEBRUARY 17, 2023

P.C.:

1. Heard Mr. Patil, learned Advocate for Petitioner and Mr. Kapse, learned Advocate for Respondent.

2. On 16.01.2023, this Court passed the following order:-

“1. The present Writ Petition has been filed to challenge the order dated 08.03.2022 passed in Misc. Civil Application No. 72 of 2021 rejecting the application of the Petitioner seeking condonation of delay for filing the application for restoration of the dismissed suit on 25.02.2020.

2. Mr. Patil would submit that by virtue of order dated 10.01.2022 passed by the Supreme Court in Misc. Application No. 21 of 2022 in Misc. Application No. 665 of 2021 in Suo Motu Writ Petition (c) No. 3 of 2020, the Petitioners ought not to have filed the application for condonation of delay as the Petitioners would have been covered by the said order and essentially there would be no delay in taking out the application seeking restoration.

3. Mr. Deshmukh has instructions to appear for Respondent. Admittedly, he has not been served. Mr. Patil, learned Advocate for Petitioners has handed over a copy of the present Writ Petition to Mr. Deshmukh in the Court today. Reply, if any, be filed within one week from today.

4. It is clarified that this Petition would be disposed of on the next date.

5. Stand over to 23rd January, 2023.”

3. Today Mr. Kapse, learned Advocate for Respondent has drawn my attention to the affidavit-in-reply dated 20.01.2023 filed by the contesting Respondent and submitted that the Petitioner does not deserve any relief from this Court in view of the utter disregard shown by him as also the conduct of the Petitioner in seeking constant adjournments. He has drawn my attention to the roznama before the learned Trial Court which is appended as Exh. 'A' at page No. 66 of the Writ Petition and more specifically drawn my attention to the roznama dated 21.12.2019 and the order passed therein. He would submit that the Petitioner was levied with costs of Rs. 500/- which was not paid by the Petitioner even during the subsequent hearings on 14.01.2020, 04.01.2020 and thereafter ultimately on 25.02.2020, the impugned order came to be passed. In these circumstances, he would submit that the Petitioner does not deserve any relief in the present Petition. He has further drawn my attention to Exh. 'B' of his affidavit-in-reply at page No. 88 wherein at the behest of the Petitioner a complaint was filed by him on 15.02.2022 against the construction carried out by the Respondent and the Municipal Council has taken immediate cognizance of the same and action has been initiated and in view thereof, the Respondent has had to undergo a tedious process.

4. Perused the record of the case. Undoubtedly on the aspect of delay, it is not the case of any party that there is any delay in filing

the application seeking restoration. Considering that the delay if any would otherwise be also exempted by the Supreme Court Orders which has been noted by this Court in its earlier order, the Petitioner being the Plaintiff undoubtedly cannot be ousted. Though Mr. Kapse has painstakingly made submissions, it would be trite in law to set aside the impugned order dated 25.02.202 and allow the Petitioner's application seeking condonation of delay and allow the parties to proceed with the Application for restoration of the suit before the learned Trial Court.

5. With the above direction, Writ Petition is allowed in terms of prayer clause (a).

[MILIND N. JADHAV, J.]

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