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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

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WRIT PETITION NO.8737 OF 2023

Prashant S. Thakker

...Petitioner

V/s.

The Board of Trustees of The Port of Bombay

...Respondent

Mr.Bhushan Deshmukh with Mr.Aman Arora i/b Mr.Aagam J. Doshi
for the Petitioner.

Adv.Heenal Wadhwa i/b The Law Point for for the Respondent.

CORAM : RAJESH S. PATIL, J.

DATE : 15TH SEPTEMBER, 2023.

P.C. :-

1. This Petition is filed challenging the judgment and order dated 27 June 2022 and 28 March 2023, passed by the Appellate Bench of the Court of Small Causes, Mumbai.

2. The Petitioner is the original Defendant against whom the suit was filed under Section 41 of the Presidency of the Small Causes Act being L E & C Claim No.96/113/1982. The said suit was decreed by an Judgment and order dated 22 July 2003.

3. Being aggrieved by the Judgment and order dated 22 July 2003 passed by the Single Bench of the Court of Small Causes, the Petitioner herein filed an Appeal being Appeal No.556 of 2004 before the Appellate Bench of the Court of Small Causes. The said Appeal

was dismissed for non-appearance of the Petitioner. The Petitioner thereafter preferred an application for restoration of the Appeal before the Appellate Bench of the Court of Small Causes. However, the application for restoration was also rejected by an order dated 28 March 2023.

4. In the present Writ Petition, the Petitioner is challenging the Judgment and orders passed by the Appellate Bench of the Court of Small Causes.

5. It is the case of the Petitioner that the Appeal be restored and Petitioner be heard on merit and thereafter, Appeal can be disposed off on merits. The Petitioner states that eviction decree was passed on 22 July 2003. Thereafter in the month of April 2021, the original Appellant died and thereafter the present Petitioner was brought on record. However, unfortunately, the advocate appointed by the Petitioner also died. In such a situation, the Petitioner had no advocate, who could pursue / prosecute the Appeal. The Petitioner thereafter appointed a new advocate, however there was serious miscommunication between the newly appointed Advocate and the Petitioner. Thereafter to over come such situation, he appointed another lawyer who could help him in prosecuting the Appeal. However, unfortunately, in the Appeal the Advocate appointed by the Petitioner did not appear before the Appellate Court and the Appeal

was dismissed on 27 June 2022. The Petitioner on receiving the knowledge immediately preferred an application for setting aside the judgment and order dated 27 June 2022. However, the the Appellate Court in the Court of Small Causes dismissed the application. It is the case of the Petitioner that the premises is only 224 sq.ft. Situated at the market area at Masjid, Mumbai. It is submitted on behalf of the Petitioner that the Petitioner is having a small shop and is doing his business in this shop.

6. Advocate for the Respondent states that once the Appeal has been dismissed, this Court should not entertain the present Petition and the Writ Petition should be dismissed. As inspite of giving many opportunities the Petitioner failed to appear before the Appellate Court.

7. I have heard both the sides and considered the pleadings on record. I am satisfied that case is made out in the present Writ Petition to set aside the impugned judgments and orders dated 27 June 2022 and 28 March 2023.

8. Writ Petition is allowed in terms of prayer clause (a) and (b). The Appeal is restored to file. The parties to co-operate with the hearing of the Appeal and the Appeal should be decided within a period of four months after issuance of a writ from this Court. At this stage Advocate for the Respondent is pressing for the costs, to be

granted to her client. Taking into consideration the fact of this case, cost of Rs.25,000/- is imposed on the Petitioner to be paid to the Respondent within a period of six weeks from today.

9. The Writ Petition is accordingly disposed of.

(RAJESH S. PATIL, J.)