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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11324 OF 2023**

The President, Bharat Shikshan Mandal, ... Petitioners
Satara and Anr

vs.

Shri Hanmant Dattatray Nalawade and Anr ... Respondents

Mr. Ramdas A. Shelke, for Petitioners.

Ms. Riddhi Gurav i/b. Ashwin Kapadnis for Respondent no.5.

Mr. S.L. Babar, AGP for the State.

CORAM : GAURI GODSE, J.

DATED : 22nd FEBRUARY, 2024

P.C. :-

1. This petition takes an exception to the order dated 19th June 2023, passed by the School Tribunal rejecting the petitioners' application for extension of time to pay cost in terms of order dated 2nd March 2019. By the said order the petitioners were permitted to file written statement subject to payment of cost of Rs. 1000/- on/or before the next date. Since the cost was not paid within time, written statement of the petitioner was not accepted. Hence, the petitioners filed an application for extension of time to pay the cost. The said application is rejected by the order impugned in the petition.

2. Learned counsel for the petitioners submitted that since the proceedings of the appeals were stayed in view of the order passed by the Tribunal, petitioner was unable to pay cost. He therefore, submitted that an opportunity be given to the petitioners by taking on record the written statement which was already submitted alongwith the application for setting aside the ex-parte order. He submits the written statement is also annexed to the petition.

3. Learned counsel for respondent no.1 submits that the petitioners have not explained the delay in making the application. She submits that sufficient opportunity was given to the petitioners, however, no compliance was made on behalf of the petitioner. She submits that the appeal of respondent no.1 is pending since the year 2013 and the petitioners with an intention to delay the proceedings has not paid the cost in time.

4. I have considered the submissions made by both the parties. I have perused the record. The appeal was directed to be proceeded ex-parte vide order dated 3rd October 2013. It appears that thereafter the Tribunal has passed an order to stay the proceedings of the appeal, in view of pendency of decision in the case of Writ Petition No. 1380 of 2017 in this Court. It appears that the petitioners had filed an application for setting aside the ex-parte

order, which was allowed on payment of cost. The Tribunal has therefore rejected the application on the ground that no sufficient cause is shown by the petitioners for non payment of cost, within time.

5. Learned counsel for the petitioners on instructions states that the amount of cost may be enhanced, in view of the delay. However, petitioners may be granted an opportunity of hearing on merits.

6. In view of the statement made on behalf of the petitioners that an amount of cost may be enhanced, I am inclined to allow the application subject to payment of enhanced cost by the petitioners.

7. Hence, for the reasons recorded above, petition is allowed by passing following order:

I) Impugned order dated 19th June 2023 passed by the Presiding Officer, School Tribunal, Kolhapur, Below Exhibit-26 in Appeal No. 19 of 2013 is quashed and set aside.

II) Application at Exhibit-26, filed by the petitioners is allowed subject to payment of cost of Rs. 15,000/- to be paid directly to respondent no.1 within a period of two weeks from today.

III) If amount of the cost is paid as directed above, written statement of the petitioners to be taken on record.

8. It is clarified that if cost is not paid, the present petition will stand dismissed without further reference to the Court.
9. Writ petition is disposed of in the above terms.
10. Since the appeal is pending since the year 2013, the hearing of the Appeal is expedited.

(GAURI GODSE, J.)