

HARSHADA H. SAWANT
(P.A.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11523 OF 2023

Dadasaheb Raghunath Patil

Petitioner/
.. Original Plaintiff

Versus

Yashwant Jijaba Fadtare and Ors.

Respondents/
.. Original Defendants

-
- Ms. Darshana Kambli i./by Mr. P. B. Gujar, Advocate for Petitioner.
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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 09, 2024

P.C.:

- 1.** Heard Ms. Kambli, learned Advocate for Petitioner.
- 2.** This Writ Petition takes exception to the order dated 25.11.2022 passed in Application filed below Exhibit-54. The Petitioner had initially filed Application below Exhibit-51 for bringing on record legal heirs of deceased Defendant No.1. That Application below Exhibit-51 came to be allowed by order dated 10.02.2022 which is at page No.27 of the Writ Petition. Certain conditions were stipulated in that order namely requiring the Petitioner to pay costs.
- 3.** Ms. Kambli would fairly submit that the Petitioner failed to comply with that order and in view of the conditional order passed, the Petitioner therefore filed Application afresh below Exhibit-54 seeking direction and permission of the Court to comply with the directions contained in the order dated 10.02.2022 on the ground that

aforementioned order dated 10.02.2022 was a conditional order. The learned Trial Court had held that there was no question of compliance and on that ground alone due to failure of the Petitioner to comply with the order dated 10.02.2022, the Application below Exhibit-54 stood rejected by the impugned order.

4. Ms. Kambli has drawn my attention to the averments made in the Application below Exhibit-54 and I have perused the same. The reasons given in paragraph No.1 of the Application cannot be disbelieved and I am inclined to accept the same and condone the delay for non-deposit. Considering that no reasons have been given in the impugned order dated 25.11.2022, the same is quashed and set aside. Application filed below Exhibit-54 stands allowed. Petitioner who is Plaintiff before the learned Trial Court is permitted to pay / deposit the cost as awarded in the order dated 10.02.2022 within a period of eight (8) weeks from today and if Petitioner deposits the same the order dated 10.02.2022 shall stand complied with. Suit to thereafter proceed in accordance with law.

5. With the above directions, Writ Petition stands allowed.

H. H. SAWANT

[MILIND N. JADHAV, J.]

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