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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3739 OF 2024

Trimurti Nagari Sahakari Pathsanstha
Maryadit Jaysingpur and Anr.

.. Petitioners

Versus

Manilal Abaji Patel and Ors.

.. Respondents

-
- Mr. Dheeraj Patil, Advocate for Petitioners.
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CORAM : MILIND N. JADHAV, J.

DATE : MARCH 19, 2024.

P.C.:

- 1.** Heard Mr. Patil, learned Advocate for Petitioners.
- 2.** The Writ Petition takes exception to the order dated 07.11.2023 passed in Application filed below Exhibit “1” in Civil Misc. Application No.5 of 2020. This Application is filed for seeking condonation of delay of 209 days in filing the Appeal. The Suit was dismissed by the learned Trial Court after allowing Application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short “CPC”) of the Defendants and in that view of the matter, being aggrieved the Respondent has preferred the Civil Appeal while doing so. There is a delay of 209 days.
- 3.** Mr. Patil would vehemently argue that in view of the judgment passed by the learned Trial Court while disposing the

Application filed under Order VII Rule 11 of the CPC rejecting the plaint, the findings given by the learned Trial Court are such that the Suit on the face of record is not maintainable and therefore the impugned order ought not to have entertained the Application for condonation of delay for filing the Appeal.

4. I may be in agreement with the submissions made by Mr. Patil, but the filing of the Appeal is a very valuable statutory right which cannot be denied to any litigant, rather it is a continuation of the Suit proceedings itself.

5. Hence, this Court is refraining from delineating on the merits of the matter. The impugned order dated 07.11.2023 records that the Respondent resides at Bengaluru and therefore he did not have knowledge about the passing of the order by the learned Trial Court. The learned District Court has also considered the referral card issued by the Medical Officer, Primary Health Center, Jaysingpur placed on record to prove that the Respondent was unwell and ill at the then time.

6. In that view of the mater, the learned District Court has condoned the delay of 209 days by agreeing with the sufficient cause made out for condonation of the said delay.

7. Mr. Patil would however argue that one of the ground relied upon by the Respondent that he was unwell is incorrect since during

the then time Respondent has attended Court matters in other Courts at Jaysingpur. Mr. Patil has placed on record certain material in the form of roznama to show that the Respondent had attended certain Court proceedings during the then time.

8. I have considered the submissions made by Mr. Patil. I have perused the Application filed by the Respondent which is at page No.95 of the Writ Petition. It is seen that the learned District Court has considered the reasons stated in paragraph Nos.1 and 2 of the said Application and according to its discretion considered the same to be a sufficient ground for condoning the delay and allowing the Application. Learned District Court has also subjected the Respondent to payment of costs of Rs.3,000/- and in that view of the matter has balanced the convenience of the parties.

9. In view of the above observations and findings, I do not find any reason to interfere with the well reasoned impugned order dated 07.11.2023. The order dated 07.11.2023 is sustained and confirmed. However considering that the Suit is filed in the year 2011, Mr. Patil would urge the Court to pass appropriate directions for expeditious disposal of the Appeal. This request of Mr. Patil is fair and deserves to be allowed. Hence considering that the original Suit is filed in the year 2011, the learned District Court, subject to compliance of the order dated 07.11.2023, is directed by this Court to register Regular Civil

Appeal immediately and dispose of the same as expeditiously as possible and preferably within a period of six weeks from today positively.

10. It is clarified that the District Court shall not grant any unnecessary adjournments to the parties unless if it is utmost necessary due to any emergency / exigency.

11. Parties shall cooperate with the District Court for expeditious disposal of the Appeal proceedings. They are directed to appear before the District Court at 11:00 a.m. on 21st March, 2024 alongwith an authenticated copy of this order and place the order before the learned District Court to enable the Court to fix the hearing dates as per its convenience. Learned Advocate for Petitioners shall ensure that copy of this order is served upon the Respondents positively by tomorrow so that the Respondents can also appear before the learned District Court on 21.03.2024.

12. With the above directions, Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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