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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1247 OF 2019

Kiran Rohit Mehta

.. Petitioner

Versus

Surekha Hanumantrao Pawar and Ors

.. Respondents

-
- Mr. Anirban Tripathy, Advocate for Petitioner.
 - Mr. Jayesh Madhav Joshi, Advocate for Respondent No.3.
-

CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 15, 2024.

P.C.:

1. Heard Mr. Tripathy, learned Advocate for Petitioner and Mr. Joshi, learned Advocate for Respondent No.3.

2. This Writ Petition is filed taking exception to the order dated 15.07.2016 which is at Exhibit “B” - page No.31 of the Writ Petition. It is hand written order recording that despite specific order the Plaintiff and his Advocate took no effective steps to serve Defendant Nos.3 and 4 and as such the Suit stood dismissed against Defendant Nos.3 and 4 for want of taking steps.

3. Mr. Tripathy, learned Advocate for Plaintiff who is Petitioner before me would submit that pursuant to this order, Plaintiff filed two Applications before the learned Trial Court for setting aside of the aforesaid dismissal order. Copies of these Applications are appended to the Writ Petition as Exhibit “C” and Exhibit “E”. One such

Application filed below Exhibit “45” which was dismissed by the learned Trial Court by passing a reasoned order is placed at Exhibit “G” - page No.46 of the Writ Petition. Since the Application filed below Exhibit “45” was dismissed, second Application filed by the Petitioner below Exhibit “66” was also dismissed accordingly following Suit.

4. Being aggrieved, Petitioner has filed the present Writ Petition.

5. Mr. Tripathy would immediately draw my attention to the fact that the reasons for non-prosecution for the delay were two-fold namely that the Plaintiff was ill and advised to take bed rest and in that view of the matter, he could not appear before the Trial Court personally nor could take any steps thereafter.

6. Next he would submit that the Advocate appointed by Plaintiff also did not take any steps to effect service on Defendant Nos.3 and 4, resultantly leading to the passing of the order dated 15.07.2016 as also the order dated 16.03.2018. He would fairly submit that the learned Trial Court has in paragraph Nos.6 to 8 given reasons that recourse was available to the Plaintiff to file a Review Petition or even file a fresh Suit within the prescribed period of limitation after dismissal of the Suit *qua* Defendant Nos.3 and 4. He would submit that it has been stated by the learned Trial Court that exercise of inherent jurisdiction under Section 151 of the Code of Civil Procedure,

1908 cannot be exercised to set aside dismissal of the Suit which is impliedly prohibited. Therefore he has urged the Court to consider the aforesaid two grounds and pass appropriate orders in the interest of justice and set aside the impugned orders.

7. At the outset, Mr. Joshi would submit that the Petitioner had infact filed a Review of the order passed below Exhibit “45” before the learned Trial Court but has not placed on record the outcome of the said Review Application.

8. Mr. Tripathy in his usual fairness would submit that the Review Application according to his instructions was dismissed.

9. Mr. Joshi would next submit that he appears for original Respondent No.3. In so far as original Respondent No.4 is concerned, it is informed to the Court that the original Respondent No.4 has relinquished her right by executing a deed of release in favour of Plaintiff's brother.

10. Be that as it may, from the above it is clear that there has been lethargy and delay on the part of the Advocate for the Petitioner in managing the Suit proceedings which is self explanatory from various Applications made time and again and the orders passed by the learned Trial Court recording the same. Defendant Nos.3 and 4 were admittedly not served.

11. For the negligence and lethargy of the Advocate, I do not find any grave reason to dismiss the Plaintiff's Petition in view of the reasons mentioned in the impugned order and the facts and circumstances of the present case.

12. In that view of the matter, the impugned order dated 15.07.2016 stands quashed and set aside.

13. Mr. Tripathy undertakes to serve the Respondent Nos.3 and 4 afresh within a period of two weeks from today.

14. In view of the above, the impugned order dated 15.07.2016 stands quashed and set aside, subject to Petitioner paying costs of Rs.5,000/- to be paid over to the Kirtikar Law Library, High Court, Mumbai which shall be paid within a period of two weeks from today and receipt of payment shall be placed on record with the Registry. Delay stands condoned.

15. In view of the above, the two orders passed below Exhibit "45" and Exhibit "66" which are referred to herein above shall also stand quashed and set aside.

16. Suit is directed to be proceeded with thereafter in accordance with law.

17. Suit to appear before the Trial Court on 01.02.2024. Parties shall mention the Suit for listing before the Trial Court alongwith a copy of this order on 31.01.2024.

18. Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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