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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4480 OF 2024

Shripati Dnyanu Tagare and Ors. .. Petitioners

Versus

Chairman,
Nandani Bhajipal Utpadak Sahakari Sangh
Limited and Ors. .. Respondents

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• Mr. Prasad B. Kulkarni, Advocate for Petitioners.

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CORAM : MILIND N. JADHAV, J.

DATE : JULY 19, 2024.

P.C.:

1. Heard Mr. Kulkarni, learned Advocate for Petitioners.
2. By the impugned order dated 14.12.2022, the Application filed by the Appellants seeking restoration of Regular Civil Appeal No.24 of 2008 on 11.09.2014 has been dismissed with costs.
3. It is seen that on 19.01.2012 the Appeal was dismissed for want of prosecution. The said order is at Exhibit “C” – page No.27 of the Writ Petition. It is stated in that order that by filing *pursis* below Exhibit “32”, Appellants have unconditionally withdrawn the Appeal and hence Appeal was dismissed for want of prosecution as withdrawn.

4. The reference to the *pursis* is made in that order as *pursis* filed below Exhibit “32” which is appended at Exhibit “B” – page No.25 of the Writ Petition. Perusal of that *pursis* reveals that the Appellants have not made any Application to withdraw the Appeal unconditionally. The said *pursis* states that because of the Appellant having made statutory Application before the Consolidation Officer, hearing of the Appeal should be kept pending.

5. I have perused the *pursis* and findings with the able assistance of Mr. Kulkarni. There is no Application of the Appellants for unconditional withdrawal of the Appeal as can be seen from the *pursis* and in that view of the matter, the *pursis* dated 19.01.2012 stating that the Appellants have unconditionally withdrawn the Appeal is *prima facie* incorrect. The same has been incidentally considered by the learned District Court while passing the order and the finding is returned in paragraph No.7 of the impugned order dated 14.12.2022.

6. It is seen that though Application was filed on 11.09.2014 by the Appellants seeking restoration of the Appeal, the same has been decided after a hiatus of more than 8 years, 3 months by the District Court in the year 2022.

7. Be that as it may, once this Court finds that there is incorrect recording of the *pursis* in the order dated 14.12.2022, then the

impugned order is clearly unsustainable in law. There is a delay of 2 years, 7 months and 22 days in filing the Application for restoration after dismissal of the Regular Civil Appeal. Regular Civil Appeal is a substantive right of the Appellants and the delay ought to have been condoned by the learned District Court in view of the Application i.e. *pursis* filed below Exhibit “32”. However by wrongfully interpreting the *pursis* in its order dated 19.01.2012, a substantive right of the Appeal has been deprived to the Appellants. Admittedly, Regular Civil Appeal was pending in the Court since the year 2008 and in that aspect the Application seeking restoration filed below Exhibit “38/A” in Misc. Civil Application No.3 of 2015 ought to have been considered.

8. At the highest, the learned District Court could have levied costs for restoration of the Regular Civil Appeal, rather the learned District Court has considered the *pursis* filed below Exhibit “33” and held that Appellants have unconditionally withdrawn the Appeal, which is not the case. The said reasoning returned by the learned District Court cannot be acceptable.

9. The impugned order dated 14.12.2022 is therefore unsustainable in law and is quashed and set aside.

10. As a result, aforesaid Misc. Civil Application, Regular Civil Appeal No.24 of 2008 is allowed and restored to the record and file of the Court and the District Court is directed by this Court to dispose of

Regular Civil Appeal No.24 of 2008 as expeditiously as possible and in any event within a period of six (6) months from today subject to payment of costs of Rs.3,000/- to the Respondents in the Civil Appeal. Costs shall be paid to the Respondents within a period of two weeks from today by the Defendants.

11. Needless to state that the learned District Court shall not be influenced by any of the observations and findings returned in the impugned order and this order for disposal of the Regular Civil Appeal on the basis of its own merits.

12. It is clarified that parties shall not take any unnecessary adjournments and the District Court shall grant adjournment only if it is utmost necessary.

13. Parties are directed to cooperate with the District Court for expeditious disposal of the Regular Civil Appeal.

14. All contentions of both the parties are expressly kept open before the District Court.

15. With the above directions, Writ Petition is allowed and disposed.

[MILIND N. JADHAV, J.]

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