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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

60 WRIT PETITION NO. 11711 OF 2023

**MANGALABAI DHANRAJ PAWAR THROUGH POA DHANRAJ
LOTAN PAWAR**

....Petitioner

VERSUS

**TRIMBAK LAXMAN SHINDE DIED (PETITIONER IS THE ONLY
LRS)) AND OTHERS**

.....Respondents

Mr. U. G. Mitkari, Advocate for the petitioner

CORAM : KISHORE C. SANT, J.

DATE : 05th MARCH, 2025

P. C.

1. Heard the learned advocate for the petitioner.
2. The challenge in this petition is to the order dated 31-07-2023 passed below Exh.29 in RCA No. 47/2015 by the learned District Judge-3, Aurangabad. By way of impugned order, the application of the petitioner for setting aside the order of dismissal of the appeal against respondent Nos. 4 and 6 came to be dismissed. It is the case of the petitioner that the appellate

court had directed to serve respondent No. 4 and 6 by way of paper publication by order dated 12-03-2020. However, immediately thereafter Corona period started and therefore, petitioner could not take steps. The petitioner is lady residing at distant place in Jalgaon. Due to Corona she could not take proper follow up with her advocate at Aurangabad. The order was passed by the learned Judge and dismissed the appeal for default against these respondents. The learned trial Judge observed that in spite of several chances no attempts were made and no steps were taken and that there is no reason to set aside the impugned order.

3. The learned advocate for the petitioner submits that the petitioner happens to be a lady. She could not contact her Advocate. She also could not get knowledge about the dismissal order. It is only when her advocate sent her communication dated 26-04-2023, she got the knowledge of the dismissal order. She thereafter, filed an application on 28-07-2023. It is specific case that she has no desire to unnecessarily prolong the matter.

Therefore, the petition deserves to be allowed.

4. Considering the impugned order and the application it is seen that the appeal was pending since 2015 and it was only at the stage of service of notice on respondent Nos. 4 and 6 therein, though the order was passed by 12-03-2020 to serve those respondents by way of paper publication, no steps were taken. This court however, finds some substance in the argument of the learned advocate for the petitioner that the petitioner had no knowledge of the order because of the difficulty expressed in the application. Right of the appeal is substantive right. The petitioner being a lady, she should not be deprived of such right for some lapses. The respondent can be compensated by way of cost. In view of the same, following order:-

ORDER

a] The writ petition stands allowed in terms of prayer clause-A subject to payment of cost of Rs.10,000/- to the District Legal Aid-Services Authority District Court at Aurangabad within four weeks from today.

b] The RCA/47/2015 before the learned District

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Judge, Aurangabad stands restored to its original position subject to above.

c] The petitioner shall not commit any default hereinafter.

d] The learned trial court to decide the appeal as early as possible in any case within a period of one year from today.

[KISHORE C. SANT, J.]

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