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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14637 OF 2018

Rama Govind Shendage

... Petitioner

V/s.

Bhima Kisan Nagar Goje and Ors.

... Respondents

Mr. Avinash Avhad for the Petitioner
Mr. Jitendra Pathade for Respondent No.2

CORAM : ALOK ARADHE, CJ.

DATE : 07 JULY 2025

Oral Order :

1. In this Petition, under Article 227 of the Constitution of India, the Petitioner seeks to quash and set aside the order dated 17 June 2017, passed by the Civil Judge, Senior Division, Malshiras, District Solapur in Civil Miscellaneous Application No. 2 of 2016, by which application seeking restoration of Regular Civil Suit No. 165 of 1997 was dismissed for want of prosecution.

2. Facts giving rise to filing of this Writ Petition in nut shell are that the Petitioner/Plaintiff had filed a Suit seeking the relief of cancellation of Sale Deed dated 6 August 1997. The Suit was initially instituted in the Court of Pandharpur, District Solapur. Thereafter, it was transferred to the Court of

Civil Judge, Senior Division, Malshiras, District Solapur and renumbered as Regular Civil Suit No. 1257 of 2000. The aforesaid Civil Suit was dismissed for default on 6 October 2008. Thereupon, the Petitioner/Plaintiff filed an application seeking restoration of the Civil Suit. Along with the application seeking restoration of the Civil Suit, the Petitioner filed an application seeking condonation of delay of five days in filing the application for restoration.

3. The Trial Court allowed the application seeking condonation of delay. On 17 June 2017, the Petition filed by the Petitioner seeking restoration of the Civil Suit was fixed for hearing before the Trial Court. However, the learned Counsel for the Petitioner could not appear before the Trial Court on account of personal difficulty and an application seeking adjournment was filed. The Trial Court, by impugned order dated 17 June 2017 has rejected the aforesaid application on the ground that no sufficient cause for absence of the Counsel was mentioned in the application.

4. The learned Counsel for the Petitioner submits that the Trial Court ought to have appreciated that on account of illness of the Power of Attorney holder of the Petitioner/Plaintiff, the Petitioner/Plaintiff was unable to appear and that is why an application for adjournment was sought. It is submitted that expression sufficient cause deserves to be construed liberally.

5. On the other hand, the learned Counsel for the Respondents submitted that the Petitioner has not shown due diligence in prosecuting the Civil Suit and the application has been rejected by assigning cogent reasons which do not call for any interference in exercise of supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

6. I have considered the submissions made on both the sides and have perused the record.

7. It is well settled in law that for the fault committed by a Counsel the parties cannot be penalized. It is equally well settled legal position that expression sufficient cause deserves to be construed liberally.

8. In the facts and circumstances of the case, a party should get a fair opportunity for trial. Therefore, the impugned order dated 17 June 2017 is set aside and the application filed by the Petitioner seeking restoration of Civil Suit No. 1257 of 2000 is allowed. The Trial Court is directed to proceed expeditiously with the Suit in accordance with law.

9. In the result, the Petition is allowed.

(CHIEF JUSTICE)