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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.11985 OF 2022

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Zilha Parishad Sindhudurga,
through Chief Executive Officer

... Petitioner

V/s.

Nirmala Madhavrao Chavan & Anr.

... Respondents

Mr. Shashank C. Mangle for the petitioner (through
V.C.)

Ms. Seema Chopda for respondent Nos.1, 2, & 3(a) to
3(c).

CORAM : AMIT BORKAR, J.

DATED : JANUARY 27, 2025

P.C.:

1. The present writ petition challenges the order passed by the Civil Judge Junior Division, Malvan, rejecting the petitioner's application for recalling an ex parte order issued under Order IX Rule 7 of the Code of Civil Procedure, 1908. The petitioner, Zilla Parishad, has attributed its absence on the relevant date to the unavailability of the concerned Administrative Officer, who was out of station. Consequently, on 23rd January 2019, the Civil Court proceeded to pass the ex parte order.

2. The petitioner contends that, as a Local Authority, the delay in filing the application for recalling the ex parte order was neither

intentional nor motivated by negligence, and that the delay should be considered bona fide, attributable to administrative exigencies.

3. The dispute pending before the Civil Court pertains to the removal of alleged encroachment and involves substantive rights of the parties concerning immovable property. The outcome of the litigation directly affects the proprietary interests of both sides. In such circumstances, it was incumbent upon the Civil Court to adopt a liberal approach while adjudicating the petitioner's application for recalling the ex parte order. The principles of natural justice and the right to a fair hearing are paramount in ensuring that both parties are given an adequate opportunity to present their case, particularly when procedural lapses are neither deliberate nor indicative of malafide intent.

4. In my considered view, the interest of justice would be adequately served if the prejudice caused to the respondents due to the petitioner's absence is compensated by imposing costs. This ensures a balance between protecting the respondent's procedural rights and providing the petitioner with an opportunity to contest the matter on merits. Accordingly, I deem it appropriate to impose costs of ₹25,000/- on the petitioner, to mitigate any inconvenience or prejudice caused to the respondents. Hence, the following order is passed:

- a) The impugned order passed by the Civil Judge Junior Division, Malvan, below Exhibit-23 in Regular Civil Suit No. 75 of 2018 is hereby quashed and set aside.

- b) The application below Exhibit-23 in Regular Civil Suit No. 75 of 2018 stands allowed, subject to the petitioner depositing costs of ₹25,000/- to be paid to the respondents within four weeks from today.
 - c) It is clarified that, in the event the petitioner fails to pay the costs within the stipulated four-week period, the impugned order rejecting the petitioner's application for recalling the ex parte order shall automatically stand revived.
 - d) In the alternative, if the respondents are unwilling or unable to receive the costs, the petitioner shall deposit the said amount before the Trial Court within the same timeframe.
5. With these directions, the writ petition is disposed of. There shall be no order as to costs.

(AMIT BORKAR, J.)