

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4412 OF 2014

1. Bhimrao Bajirao Kharade,	)	
Age:-51, Occ:-Agriculture,	)	
2. Sambhaji Shivaji Kharade,	)	
Age:-32, Occ:-Service,	)	
3. Manoj Shivaji Kharade,	)	
Age:-29, Occ:-Service,	)	
Through their Power of Attorney	)	
holder Mr. Shivaji Bajirao Kharade,	)	
Age:-65, Occ:-Agriculture,	)	
All Residing at Manjarde,	)	
Tal. Tasgaon, Dist:-Sangali		.. Petitioners

Versus

1. Dhondiram Yashwant Sutar,	)	
Age:-32, Occ:-Agriculture,	)	
2. Bhupal Yashwant Sutar,	)	
Age:-32, Occ:-Agriculture,	)	
Both residing at Manjarde,	)	
Tal:-Tasgaon, Dist:-Sangali		.. Respondents

Mr. Sandip L. Babar, for the Petitioners.

Mr. Ramdas A. Shelke, for Respondents No.1 & 2.

CORAM : R.M. SAVANT, J.
DATE : 12th FEBRUARY, 2015

ORAL JUDGMENT

1. Rule, with the consent of the Learned Counsel for the parties made returnable forthwith and heard.

2. The Writ Jurisdiction of this Court is invoked against the order dated 14.03.2014 passed by the Learned Joint Civil Judge, Junior Division, Tasgaon, District-Sangli, by which order the application being Misc. Application No.33/12 came to be rejected.

3. The said application was filed for restoration of the suit being Regular Civil Suit No.14 of 2011 which had been dismissed for non-prosecution on 13.06.2012 as the Plaintiffs i.e. Petitioners have failed to lead oral evidence. The said order was passed after the Power of Attorney holder of the Plaintiffs had tendered an application seeking adjournment on the said day i.e. 13.06.2012 which application was rejected resulting in the passing of the said order dated 13.06.2012. The Plaintiffs thereafter filed the instant application being Misc. Application No.33 of 2012. The said application was founded on the fact that on 13.06.2012 there was a marriage in the family of the advocate for the Plaintiffs. On account of which the advocate for the Plaintiffs could not remain present in Court on the said day. The said reason did not commend acceptance to the Trial Court on the ground that the suit was adjourned to 13.06.2012 as a last

chance for the Plaintiffs to lead evidence and therefore, if the advocate could not remain present at least the affidavit of evidence ought to have been filed through the Plaintiffs and that having not been done in spite of being fully aware that the suit was kept on 13.06.2012 as a last chance, the Trial Court was of the view that the said reason could not be accepted. The Trial Court has further observed that since the application for adjournment citing the same reason which was tendered by the Power of Attorney holder for the Plaintiffs was rejected, the same reason could not be accepted for allowing the application for restoration of the suit. In my view the Trial Court has taken highly a hyper-technical view of the matter. The fact that the advocate of the Plaintiffs could not appear on the said day i.e. 13.06.2012 on account of marriage in his family cannot be lost sight of. The fact that the Power of Attorney holder of the Plaintiffs was present in Court also cannot be disputed as the application for adjournment filed by the Power of Attorney holder was rejected and thereafter the order dated 13.06.2012 came to be passed. It is well settled that a party should not suffer for the acts of the advocate. In my view therefore the impugned order dated 14.03.2012 is required to be quashed and set aside and is accordingly, quashed and set aside. Misc. Application No.33 of 2012 would stand allowed. The suit being Regular Civil Suit No.14 of 2011 would accordingly stand restored to file. The parties to

appear before the Trial Court on 24th March, 2015 at 10.30 a.m. with a copy of this order. The Trial Court would thereafter fix the schedule for recording the evidence of the parties. The Learned Counsel appearing for the Petitioners/original Plaintiffs assures the Court that the affidavit of evidence of the Plaintiffs witness would be filed on 23rd February, 2015 and that no adjournment would be sought by the Plaintiffs and that the Plaintiffs would complete their evidence expeditiously. In the facts and circumstances of the case, the Petitioners to pay costs of Rs.3000/- to the Respondents No.1 and 2 herein. The same to be paid over to the Respondents on or before 23rd February, 2015. The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute with parties to bear their respective costs of the Petition.

[R.M. SAVANT, J]