

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (STAMP) NO.23165 OF 2014

Sou. Alka Balasaheb Rahade.] ... Petitioner

Versus

Shri Govind Pandurang Sasane and Ors.] ... Respondents

Mr. Rajendra M. Haridas for Petitioner.

Mr. Sachin S. P. h/f Mr. Girish R. Agrawal for Respondent No.1

CORAM :- M. S. SONAK, J.

DATE :- APRIL 09, 2015

P. C. :-

1. The learned Counsel for Petitioner seeks leave to delete Respondent Nos.3a to 3f on the ground that they are not necessary parties at this stage.

2. Leave granted. Amendment to be carried out forthwith.

3. The learned Counsel for Respondent No.1 reports that Respondent No.2 has expired. The learned Counsel for Petitioner states that the Respondent No.1 is a legal representative of Respondent No.2 and therefore the matter can be proceeded with considering that the same is only for the purposes of seeking restoration of the suit.

4. Rule. With the consent of and at the request of learned Counsel for Respondent No.1, who is the contesting party, Rule is made returnable forthwith.

5. This petition challenges Order dated 13/09/2004 made by the learned Joint Civil Judge, Junior Division, Nashik, dismissing Regular Civil Suit No.815 of 2000 for default and Order dated 17/07/2014 made by the District Judge, Nashik, upholding the same. The two Orders, shall be referred as the impugned orders.

6. On 13/09/2004, the learned Civil Judge dismissed the suit for default as neither the Petitioner nor her Advocate was present in the Court. On the same day at 2.35 p.m. (in the afternoon session), the Advocate for Petitioner appeared and applied for adjournment, as the Petitioner was not present in the Court to proceed with the hearing in the matter. The learned Civil Judge declined to entertain such application, on the ground that the suit had already been dismissed for default in the morning session. The Appeal Court, has upheld the order for dismissal of the suit made on 13/09/2004 mainly on the ground that there was no sufficient cause shown by the Petitioner for not remaining present in the Court on 13/09/2004. Further, the Appeal Court has also held that the application was not made by the Petitioner, but by her Advocate.

7. Mr. Sachin, learned Counsel for Respondent No.1, submitted that there is no reason to interfere with the impugned

orders, because sufficient cause was indeed not shown by the Petitioner for non-appearance on 13/09/2004.

8. Having perused the impugned orders and the record, to my mind, the impugned orders operate too harshly upon the Petitioner. It is true that the Petitioner was not present on 13/09/2004. However on the same day, the Petitioner's Advocate appeared and applied for an adjournment. The adjournment application was not taken into consideration, because in the morning session, the suit had been dismissed for default. In the application, made by the Petitioner's Advocate, cause was shown for her non-appearance on 13/09/2004. In the facts and circumstances of the present case, such cause was sufficient for restoration.

9. In the circumstances, the impugned orders are set aside. The suit is restored to the file of learned Civil Judge. The Petitioner, to pay costs of Rs.2,500/- to the Respondent No.1, who has appeared in this matter through Counsel. The costs shall be paid directly to the Respondent No.1 or deposited in the Court of learned Civil Judge, wherefrom the Respondent No.1 shall have the liberty to withdraw the same unconditionally.

10. Rule is made absolute to the aforesaid extent. There shall be no separate order as to costs in the present petition.

11. The parties to appear before the learned Civil Judge on 28/04/2015 at 11.00 a.m. and produce authenticated copy of this order.

12. All parties to act on the basis of authenticated copy of this Order.

(M. S. SONAK, J.)