

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

WRIT PETITION NO. 463 OF 2015

M/s. Pallavi Constructions, Beed .. Petitioner

Versus

Water Resources Department Govt.
of Maharashtra, Mumbai and others .. Respondents

Shri P. H. Kalani, Advocate h/f Shri J. N. Singh, Advocate for the
Petitioner.

Shri P. N. Kutti, A. G. P. for the Respondent No. 1.

Shri S. P. Sonpawale, Advocate for the Respondent Nos. 2 to 5.

CORAM : S. V. GANGAPURWALA, J.

DATE : 22ND MARCH, 2016.

PER COURT :

. The present petitioner is the original plaintiff who has filed suit for recovery of amount. The plaintiff had filed examination in chief on 15.04.2013. Thereafter, it appears that the plaintiff remained absent consistently for 3 to 4 dates and the Court passed an order dismissing it in default.

2. Mr. Kalani, the learned counsel for the petitioner submits that, the plaintiff after the order of dismissal was passed came before the Court. According to the learned counsel, the examination in chief is also filed on record. On one date the

Court was not available when the plaintiff was present. On 25.11.2013 the plaintiff was out of station.

3. Mr. Sonpawale, the learned counsel for respondent Nos. 2 to 5 submits that, the plaintiff after filing the examination in chief is consistently absent. The said aspect needs to be considered. The Trial Court has rightly considered the said aspect. No reasonable cause is stated for not attending the Court. There is nothing on record to show that on the relevant date the plaintiff was out of station.

4. I have considered the submissions.

5. No doubt it appears that petitioner/P.W. No. 1 has filed examination in chief on 15.04.2013. Thereafter, the plaintiff remained absent on 23.07.2013, 27.08.2013, 03.10.2013, 15.10.2013. On 25.11.2013 when the plaintiff was absent the suit is dismissed in default. I would have considered the contention of the defendants, but it appears that even defendants were absent on 27.08.2013, 03.10.2013, 15.10.2013. The suit is of the year, 2011. The suit is a substantive suit for recovery of amount. It is stated that on 25.11.2013 the plaintiff was out of station. Considering the reason given, I am inclined to grant one more opportunity to the petitioner.

6. In the result I pass the following order.

7. The impugned order is quashed and set aside. The Miscellaneous Civil Application No. 456 of 2013 is allowed and Special Civil Suit No. 147 of 2011 is restored to its original position on condition that the plaintiff deposits costs of Rs. 25,000/- in the Trial Court on or before 11th April, 2016. The parties shall appear before the Trial Court on 11th April, 2016. If the cost is not deposited on or before 11.04.2016 then the Special Civil Suit No. 147 of 2011 shall stand dismissed. If the cost is deposited as directed, the respondents are entitled to withdraw the said amount. The writ petition is accordingly partly allowed.

[S. V. GANGAPURWALA, J.]

bsb/March 16