

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

CIVIL REVISION APPLICATION NO. 131 OF 2015

Kamaljitsingh s/o Ranjitsingh Chhabda
Age 60 years, occup. Business,
R/o Plot No.56, Shivaji Sindhi Colony, ... Petitioner/
Near Gurudwara, Jalna Road, Original
Aurangabad. Resp. No. 1

versus

01. Ramesh s/o Gopalrao Lingayat
Age 45 years, occup. Business,
R/o 308, Dana Bazar, Cantonment,
Aurangabad
02. Sow. Mangalabai w/o Ramesh Lingayat
Age 40 years, occup. Household,
R/o as above
03. Shaikh Abdul Raihman @ Farooq
S/o Shaikh Mohammad,
Age 51 years, occup. Business,
R/o Tattani building, Gulmandi,
Kumbharwada Corner, Aurangabad
[deleted as per court order dated 01-07-2016]
04. Mohd. Idris s/o Mohd. Ismail Khatri .. Respondents/
Age 40 years, occup. Business, Nos.1 and 2
R/o as above ori.Petitioners
Nos. 3 and 4
Orig. Resps.
No. 2 and 3

Mr. Pramod F. Patni, Advocate for petitioner
Mr. A. R. Vaidya, Advocate for respondents no. 1 and 2

CORAM : SUNIL P. DESHMUKH, J.
DATE : 30th August, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard the learned counsel for the parties finally, by consent.

2. Aggrieved by judgment and order passed by 7th Joint Civil Judge, Junior Division, Aurangabad on 10-04-2015 allowing Miscellaneous Application Requiring Judicial Inquiry [" MARJI" for brevity] bearing No. 389 of 2012 filed by present respondents no. 1 and 2 seeking restoration of rent suit bearing No. 23 of 2007 which was dismissed in default on 21-03-2012, applicant- the original respondent no. 1 in the MARJI, is before this court.

3. It is the contention of the applicant that MARJI for restoration of rent suit though has been filed ostensibly within time, it is on grounds which would be bereft of any veracity. It is being vehemently submitted that though respondents no. 1 & 2 purport to contend that the rent suit proceedings could not be attended to by plaintiffs-respondents no. 1 and 2 herein due to illness of their father and brother, however, the

trial court found that there is no veracity in said contention and yet the court went on to allow the MARJI for the reason that there is possibility of jumbling on dates as contended by plaintiffs in the application for restoration of rent suit.

4. Mr. Patni, learned counsel submits, referring to depositions in the MARJI that even it cannot be said that there was ever jumbling on dates at all. He, therefore, submits that the plaintiffs do not deserve any leniency and MARJI ought to have been rejected.

5. On the other hand, Mr. Kulkarni learned counsel for respondents no. 1 and 2—original applicants-plaintiffs submits that although there may not be a logical flow appearing in the MARJI, however, the factual position is otherwise. Applicants' brother, in fact, had been suffering from white jaundice and his father being age-old person had also been ailing but that is the factual position though ostensibly material may not tangibly available on record and in the circumstances the observations by the court are occurring, but the fact remains that those were the reasons due to which the matter could not be attended and prosecuted properly by the respondents-plaintiffs. He further submits that as rightly considered by the

court, since it emerges that there are other litigations going on and looking at passage from 2007 to 2012, it was not realized by the applicants-plaintiffs that on every occasion they should enquire about other proceedings while they were seeing their lawyer in other court proceedings.

6. The other submission advanced by learned counsel Mr. Patni for petitioner is that when the matter is dismissed with specific reference to Order IX, rule 3 of the Code of Civil Procedure, 1973, Order IX rule 9 may not apply.

7. Nonetheless the court has ample powers under law to reconstitute the proceedings in case of defaults which would not be deliberate and would not give material benefit to defaulting party, in the interest of justice. The trial court has distinguished the case cited on behalf of the petitioner. It has referred to certain other procedural rules which would be invoked in the present case and purported to exercise powers under the same.

8. Overall, it appears that discretion as has been available to the trial court appears to have been exercised in favour of the respondents. Exercise of discretion does not appear to be totally out of tune of the procedural rules and powers of the

trial court. The respondents have given reasons and the circumstances under which matter went unattended on their behalf. Suit has been pending since 2007. In the circumstances, the reasons given and appreciation of the same as has been done by the trial court does not appear to be perverse. It is, as such, difficult to indulge into request under present civil revision application and cause interference in exercise of discretion by trial court. Further, the court has imposed costs on the applicants-present respondents no. 1 and 2 while allowing their MARJI.

9. In the circumstances, civil revision application stands dismissed. Rule stands discharged.

SUNIL P. DESHMUKH,
JUDGE

pnd