

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6597/2015

Office Notes, Office Memoranda of Coram, Appearances, court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. Sushil A. Inamdar for the petitioner

CORAM : K. K. TATED, J.

DATE : JULY 18, 2016

P.C.:

1. Heard. By this petition under Article 227 of the Constitution of India the Petitioner defendant challenges the order dated 26.03.2015 passed by the 5th Jt. Civil Judge, Junior Division Kolhapur below Exhibit- 1 in civil misc application No.307/2009 restoring the respondent plaintiff 's Special Civil Suit No. 364/2004.

2. In the present proceedings, the suit filed by the respondent plaintiff was dismissed for default on 14.08.2009. Thereafter the plaintiff made an application for restoration of the same which was allowed. Hence, the Writ Petition .

3. The learned counsel for the petitioner submits that the Trial Court erred in coming to the

conclusion that the respondent plaintiff shown sufficient cause for restoration of the suit which was dismissed for default. He submits that the Trial Court failed to consider the fact that the respondent plaintiff was not interested to proceed with the suit and they deliberately remained absent. He further submits that the learned Judge failed to consider the fact that the respondent plaintiff is a Nationalized bank and they have several Advocates on their panel to fight out the litigation on behalf of them. In spite of that when the matter was called out, none appeared for them. Therefore, there is no question of allowing the plaintiff's application for restoration of the suit. He submits that, this court, in the matter of ***Sau. Madhavi S. Kulkarni Vs. Vishram S. Bhakre AIR 2007 BOMBAY 61*** held that the application for restoration is required to be filed under Article 122 of the Limitation Act within 30 days of dismissal and not from the date of knowledge. He submits that in the present proceedings, though the suit was dismissed on 14.08.2009, the respondent plaintiff made an application for restoration on 06.10.2009. Therefore, the impugned order passed by the Trial Court is liable to be set aside.

4. Heard the learned counsel for the petitioner defendant. In the present proceedings, the respondent plaintiff filed Special Civil Suit No. 364/2004 in the court of Civil Judge, Junior Division Kolhapur for recovery of loan amount of Rs.95,000/- with interest. As none appeared for the plaintiff on 14.08.2009, the Trial Court dismissed the suit for default. Hence, the respondent plaintiff made an application dated 06.10.2009 under Order IX Rule 4 of the Code of Civil Procedure, 1908 for restoration of the suit. In that application, the respondent plaintiff specifically stated that because of mistake on the part of their Advocate the matter was dismissed.

5. It is to be noted that because of mistake on the part of the advocate, a litigant should not be suffered. The authority cited by the learned counsel for the petitioner defendant in the matter of *Madhavi S. Kulkarni* (supra) is not applicable to the case in hand. In that case, there was delay of more than two years in making the application. In the present proceedings, since the suit stood dismissed on 14.08.2009, the plaintiff made an application for certified copies on 11.09.2009 which was received by the plaintiff on 23.09.2009 and made an application before the Trial Court on

06.10.2009. This itself shows that respondent's advocate immediately made an application for restoration.

6. Considering these facts and the impugned order, I do not find any substance in the Writ Petition to interfere with the well reasoned order passed by the Trial Court. Hence, the Writ Petition stands dismissed.

JUDGE