

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL REVISION APPLICATION NO. 34 OF 2016

1] Balaji S/o Ramji Kadam
Age : 67 years, Occu.: Agriculture,
R/o Anand Nagar, Nanded,
Tq. & Dist. Nanded

2] Amol S/o Pandharinath Kendre,
Age : 37 years, Occu.: Business,
R/o Naik Nagar, Nanded,
Tq. & Dist. Nanded

3] Vishwas S/o Balasji Kadam,
Age : 34 years, Occu.: Business,
R/o Anand Nagar, Nanded,
Tq. & Dist. Nanded

.. Applicants

Vs.

1] Mohd. Abdul Khaleque S/o Mohd. Abdul
Quadeer, Age : 47 years, Occu.-Business,
R/o At present Chaitnya Nagar, Nanded,
Tq. & Dist. Nanded

2] Namdevrao S/o Gangaramji Deshmukh,
Age : 67 years, Occu.: Agriculture,
R/o Taroda (Bk), Nanded,
Tq. & Dist. Nanded

3] S. Kuldeep Singh S/o S. Keshar Singh Virkar,
Age : 80 years, Occu.: Business,
R/o Yatriniwas, Nanded,
Tq. & Dist. Nanded

.. Respondents

Mr. G.R. Syed, Advocate for the applicants
Mr. S.V. Warad, Advocate for respondent no.1
None present for respondent no.2 though served
Respondent no.3 deleted as per Court's order dated 26/8/2016

CORAM : SUNIL P. DESHMUKH, J.
DATE : 23/01/2017

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith. Heard learned counsel for the applicants and learned counsel appearing for the original plaintiff - respondent no.1 herein.

2. Revision has been moved against the order dated 13/1/2016 passed by 3rd joint civil judge senior division, Nanded in miscellaneous civil application (R.J.E.) no. 4 of 2011 thereby setting aside order dated 30/11/2010 dismissing regular civil suit no. 185 of 2008 for want of prosecution.

3. Learned counsel for the applicants contends that there is no plausible reason coming forth for restoration of the suit, as the same had been negligently and haphazardly conducted on behalf of the plaintiff. He goes on to submit that while suit had been allowed to be dismissed vide order dated 30/11/2010, restoration has been moved to vex and harass the applicants alone, who had been defending the suit.

4. Learned counsel for the applicants submits that approach of the plaintiff had been callous and that even his Advocate had not bothered to appear before the court when dismissal order had been passed having been pre-warned by order on earlier date that dismissal would take place in default. The application ought not have been

allowed and the seeks indulgence of the court to allow civil revision application.

5. Learned counsel on behalf of the original plaintiff - respondent no.1 submits that the court, while passing impugned order, has taken into account that default has not been willful and has been due to ailment of the plaintiff. The same has been referred to in paragraph no.7 of the impugned order. He further points out that there is no challenge to the reason underlying impugned order.

6. Looking at that the suit has been dismissed for lapse on the part of the plaintiff on 30/11/2010 for him being not present and that there is no challenge to the reason given for lapse should receive its due. In the circumstances, the impugned order has been passed by the trial court in exercise of its discretion. There is no circumstance by which it can be said that the exercise has been improper or had not been by following judicial principle.

7. In the revisional powers of this court, it does not appear to be a case wherein it can be said that the impugned order deserves to be intercepted. Revision application, as such is dismissed. Rule is discharged.

8. Since suit has been pending from 2008, it would be proper for the trial court to proceed ahead for its disposal expeditiously,

preferably within a period of nine (9) months from the date of receipt of this order. It is further made clear that this order shall not influence the merits of the case.

[SUNIL P. DESHMUKH]
JUDGE

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