

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

WRIT PETITION NO.6830 OF 2017

Tanhaji s/o. Gamaj @ Dharmraj
Pandit,
Age : 73 years, Occ. Pensioner,
r/o. Bhaldarpura, Beed ..Petitioner

Vs.

Qamaruzzama s/o. Abdul Razzak,
Age : 54 years, Occ. Business,
and others ..Respondents

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Mr.S.G.Chapalgaonkar, Advocate for petitioners

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CORAM : SANGITRAO S. PATIL, J.

DATE : JUNE 28, 2017

PER COURT :

Heard.

2. The petitioner had challenged the order dated 05.12.2016 below Exh.1 in M.C.A. No.622 of 2014 passed by the learned Joint Civil Judge, Junior Division, Beed, whereby R.C.S. No.129 of 1999, has been ordered to be restored for disposal according to law.

3. The above-numbered suit was dismissed in default on 21.01.2002 since the respondents (original plaintiffs) were absent before the Court. They filed an application for restoration of the suit on 30.06.2003.

4. It was the case of respondents that they had engaged Advocate B.R.Yewatekar for conducting the suit on their behalf. They were advised by the said Advocate that they need not attend the Court on each of the dates and that they would be informed about the dates on which they would be required to attend the Court. However, thereafter, Advocate Yewatekar suffered from some health problems and could not attend the Court. His young son, who was also an Advocate, expired, which disturbed the mental condition of Advocate Yewatekar. He left Beed and stopped practice in the Court at Beed, however, he did not inform the respondents about that fact and about the effective date of hearing of the suit.

Consequently, the suit came to be dismissed. It was contended by the respondents that the suit pertains to their proprietary right in the immovable property and therefore, they would be put to suffer irreparable loss if the suit is not restored.

5. The petitioner (original defendant) resisted that application by filing reply and denied the case of the respondents (plaintiffs). According to him, there was no sufficient cause shown by the respondents for their absence on the date on which the suit was fixed for hearing and came to be dismissed in default. He, therefore, prayed for dismissal of the application.

6. The evidence was led by both the contesting parties in support of their rival claims. After considering the evidence on record as well as the facts of the case, the learned trial Judge was pleased to allow the application

and restore the suit for disposal according to law as per the impugned order.

7. The learned Counsel for the petitioner submits that there were no sufficient grounds shown by the respondents for restoration of the suit. According to him, the grounds shown by the respondents for restoration of the suit, have been wrongly accepted by the learned trial Judge. He, therefore, prays that the impugned order may be set aside.

8. As stated above, the respondents claimed restoration of the suit mainly on two grounds. The first one is that their Advocate had advised them not to attend the Court on each date fixed in the suit and had assured them to inform the effective date of hearing the suit. However, the learned Advocate did not inform the respondents about the effective date of hearing of the suit. They have further clarified that because of ill-health of

Advocate Yewatekar, he was not attending the Court. Moreover, due to the untimely death of his son, his mental condition was disturbed. He left practising as an Advocate in the Court at Beed. In the circumstances, relying on the assurance of Advocate Yewatekar, they did not attend the Court and consequently, the suit came to be dismissed in default.

9. In my view, the reasons shown by the respondents are quite satisfactory. It cannot be said that they intentionally remained absent before the Court on the effective date of hearing of the suit. The dispute is regarding the immovable property. It was not at all in the interest of the respondents to remain absent before the Court deliberately and invite dismissal of the suit. The learned trial Judge has rightly accepted the reasons given by the respondents, rightly set aside the order of dismissal of the suit and rightly restored the suit for disposal

according to law. I do not find any reason to interfere with the impugned order.

10. The Writ Petition is devoid of any substance. It is liable to be dismissed and accordingly dismissed. No costs.

[SANGITRAO S. PATIL, J.]

kbp