

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 7570 OF 2004

Vitthal Jaiasingh Khilare

through his heirs

v/s.

Madhav Narayan Modak & Ors.

.. Petitioners

.. Respondents

Mr. Ashok Tajane for the applicants / original petitioners

Mr. Prathamesh Bhargude for respondent no.3

Mr. Dilip Bodake for respondent no.5

CORAM : M.S. SANKLECHA, J.

DATED : 4th SEPTEMBER, 2017

P.C.

1. When this petition was taken up for admission, Mr. Tajane, learned Counsel appearing for the petitioners seeks time on the ground that there are various Civil Applications bearing Civil Application Nos. 2099 of 2017, 2100 of 2017, 2102 of 2017 and 2101 of 2017 (CA-2101/17 - not on board), which are still pending disposal. Therefore, the petition should be considered only after the above Civil Applications, four of which relates to taking steps to serve the un-served respondents and one relates bringing legal heirs of a deceased respondent on record.

2. This application for adjournment was rejected. This petition

relates to the year 2004 and is awaiting consideration for admission since then. The learned Counsel for the petitioners was informed that in case he makes out a case for interference under Article 227 of the Constitution of India, then notice could be given to the respondents in the pending civil applications and the petition could be finally heard after hearing all parties, including the proposed legal heirs. This course of action was acceptable to Mr. Tajane, the learned Counsel for the petitioners.

3. This petition challenges the order dated 2nd February, 2002 passed by the Additional District Judge, Pune. By the impugned order dated 2nd February, 2002, the petitioners' appeal from the order dated 29th August, 1998 rejecting the petitioners' application for restoration of the suit was dismissed on 16th June, 1997 for default by the trial Court.

4. The suit was before the trial Court on 16th June, 1997, the plaintiff and his advocate herein were absent so also the defendants. This resulted in the dismissal of the suit. The plaintiff therein filed an application for restoration of the suit on 24th June, 1998. The same was dismissed by the trial Court by order dated 29th August,

1998 *inter alia* holding that the evidence on record does not justify absence of the plaintiff and / or his power of attorney holder on 16th June, 1997.

5. The impugned order records the contention of the petitioner that on 16th June, 1997 when the petition was dismissed for default, she had attended the Court in the morning session. However, as she suddenly had severe abdominal pains, she was required to leave the Court premises to take medical treatment. In support, she relied upon a certificate issued by the doctor dated 15th June, 1997. The Medical Certificate is not annexed to the petition. The impugned order records the fact that the relevant date when the petitioner had to leave the Court was 16th June, 1997 and she produced the medical certificate that she was unwell on 15th June, 1997. This Medical Certificate was produced by her in her evidence. Further, the impugned order records that there is no corroborative evidence of her ill-health on 16th June, 1997 nor has the doctor who has issued the Certificate dated 15th June, 1997 been examined on behalf of the petitioners. Therefore, not finding the reasons credible, the impugned order upheld the order of the trial Court dated 29th

August, 1998 rejecting the application for recall of order dated 16th June, 1997.

6. The view taken in the impugned order is on the facts before it, a reasonable and possible view. Therefore, no interference in my supervisory jurisdiction under Article 227 of the Constitution of India is warranted.

7. Accordingly, the petition is dismissed.

8. In view of the above, the Civil Application Nos. 2099 of 2017, 2100 of 2017, 2102 of 2017 and 2101 of 2017 do not survive. Accordingly, Civil Application No.2101 of 2017 is not on board but is taken on board and all the above Civil Applications are dismissed as infructuous.

(M.S. SANKLECHA, J.)