

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

WRIT PETITION NO.9438 OF 2014

Mr. Prakash Bhagwan Taralgatti Petitioner

Vs.

Mr. Balkrishna Bhagwan Taralgatti Respondents

Mr. Samir Kumbhakoni for the Petitioner.
Mr. Ajay A. Joshi for Respondent no.1.

Coram : Smt. Sadhana S. Jadhav, J.
Date : 14th November, 2017

P.C.:

1 Heard respective Counsel. Rule. Rule made returnable forthwith with the consent of the parties.

2 The petitioner herein is the original plaintiff in Regular Civil Suit No. 255 of 1988. The suit was for partition and separate possession. It appears from the record that the suit was dismissed on 7th February 2001 for non-prosecution.

2 The petitioner had filed an application seeking restoration. The said application seeking restoration was dismissed for non-prosecution on 15th September 2012. Thereafter the petitioner had filed an application, which was registered as Application No. 32 of 2013 seeking condonation of delay in restoring the said restoration application, which was rejected by the trial Court. By an order dated 9th June, 2015, the petitioner herein was directed to deposit an amount of Rs.10,000/- in this Court. It appears that the petitioner has abided by the said condition. Notices were issued to the respondents. The learned counsel for the respondent has vehemently objected to the grant of allowing the present petition on the ground that the suit is of the year 1988 and that the petitioner was not diligent in prosecuting either the suit or the application seeking restoration. Thereafter also, there was the delay of 185 days and in this way, the suit has been pending for more than two decades. However, taking into consideration the fact that this Court by an order 9th June, 2015 has directed the petitioner to deposit an amount of Rs.10,000/-, it would suffice in the interest of

justice to hold that the petition be allowed with costs. He deserves a right to prosecute the suit on merits. In view of this, the petition deserves to be allowed and the order dated 10th February 2014 deserves to be quashed and set aside. The respondent herein would be at liberty to file an application seeking withdrawal of an amount of Rs.10,000/- towards costs for keeping the suit pending for more than 20 years. Hence, the order.

O R D E R

- (i) The petition is allowed.
- (ii) The order dated 10th February 2014 is hereby quashed and set aside.
- (iii) Civil Suit No.255 of 1998 is restored to file. The trial Court i.e. Civil Judge, Junior Division, Pandharpur is hereby directed to proceed with further stages of the suit and conclude the suit as far as possible within one year from the date of receipt of this order.
- (iv) The order dated 15th September 2012 passed by Joint Civil Judge, Junior Division, Pandharpur is also quashed and set aside.

(v) Parties are directed to appear before the learned Civil Judge, Junior Division, Pandharpur within four weeks from 15th November 2017 and proceed with further stages of the suit.

(Smt. Sadhana S. Jadhav, J.)