

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

CIVIL REVISION APPLICATION NO. 484 OF 2017

Ranjan Bhausaheb Dombé ... Applicant
V/s.
Dr.Santosh Bajarang Bagal & Ors. ... Respondents

Mr.S.P. Rajepandhare for the Applicant.
Mr.Santarram A. Tarale for Respondent Nos.1 to 3.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 20th DECEMBER, 2017.

P.C. :

1] Heard learned counsel for the Applicant and Respondent Nos.1 to 3.

2] By this Civil Revision Application filed under Article 227 of the Constitution of India, the Applicant is challenging the order dated 14.1.2016 passed by Jt.Civil Judge Junior Division, Pandharpur, thereby allowing the Respondent's Miscellaneous Application No.4 of 2015 filed for restoration of Regular Civil Suit No.112 of 2012 which was dismissed for default on 16.12.2014.

3] The submission of learned counsel for the Applicant is that the suit before the trial Court was adjourned on 25.8.2014, 5.9.2014, 22.9.2014, 7.10.2014, 19.11.2014, 8.12.2014 and ultimately it came to be dismissed for default on 16.12.2014. It is submitted that for restoration of the said suit two reasons were given by the Respondents. One is that, his Advocate was sick and therefore could not remain present and the second reason was that the next date of the said suit was shown on the board as 3.1.2015. According to learned counsel for the Petitioner, Advocate Shri D.R. Desai, who was appearing for the Respondents in the said suit, has on the same day appeared in the Court in other matters. Therefore, the ground given by the Respondents was not proper and correct. It is urged that there was one more Advocate also, namely, Advocate Shri V.K. Jadhav, representing the Respondents. Despite that, none of them cared to remain present before the Court and hence, the suit rightly came to be dismissed for default and therefore, the trial Court should not have allowed the restoration application.

4] However, perusal of the order passed by the trial Court reveals that the trial Court has considered the fact that the substantive

interest of justice requires that the matter should be decided on merits. Even otherwise also, the law is well settled that if on account of the fault on the part of Advocate of not espousing the cause of the litigant, whom he was representing, the matter is dismissed for default, then the litigant should not suffer because of it.

5] Moreover, in this case, the Roznama of the proceeding before the trial Court shows that though the Respondent No.1 was present on 16.12.2014, and even on 8.12.2014, however in view of absence of his counsel he has sought the adjournment. Therefore, it is clear that the Respondent has remained diligent but only on account of his Advocate not remaining present in the Court, the suit came to be dismissed for default. Therefore, the trial Court has rightly allowed the Respondents application for restoration of the said suit. In order to compensate the Petitioner, the trial Court has also imposed the costs of Rs.1,000/-.

6] In view thereof, the impugned order passed by the trial Court is just, legal and correct and therefore, no interference is warranted therein. Civil Revision Application therefore stands dismissed.

7] As the suit before the trial Court is of the year 2012, it is expected that the trial Court should decide the same as expeditiously as possible, provided both the parties and their counsels extend full cooperation.

[DR.SHALINI PHANSALKAR-JOSHI, J.]