

Mr. Anand S. Patil for Petitioners.
Mr. Amit B. Borkar a/w. Mr. Harshad Shingnapurkar for Respondent No.1.

P.C. :

2. By this Petition under Article 227 of the Constitution of India, petitioners, hereinafter referred to as 'plaintiffs', have challenged the judgment and order dated 09.09.2015 passed by learned 10th Joint Civil Judge, Junior Division, Kolhapur in Miscellaneous Civil Application No.47 of 2014. By that order, the learned trial Judge rejected the application made by the plaintiffs for condoning delay in filing application for restoration.

3. Mr. Patil submitted that Suit was dismissed in default on 08.11.2013. Immediately thereafter, plaintiffs filed application on 30.12.2013 for condonation of delay as also for restoration of the Suit. The learned trial Judge however, rejected the application. He further states that plaintiffs have deposited costs of Rs.10,000/- in this Court.

4. On the other hand, Mr. Borkar strenuously opposed the Petition on the ground that no case is made out for condoning the delay and

consequently restoring the Suit.

5. It is not in dispute that Suit was dismissed in default on 08.11.2013. Application was made by the petitioners for restoration on 30.12.2013. While issuing the notice, this Court directed petitioners to deposit costs of Rs.10,000/- in this Court. In pursuance thereof, petitioners have deposited Rs.10,000/- in this Court. Having regard to the fact that the application was immediately made by the petitioners for restoration, the learned trial Judge should have allowed that application. As the Suit is for specific performance of Memorandum of Understanding, application for restoration deserves to be allowed. Hence, the following order:

- a. Impugned order dated 09.09.2015 is set aside and the Miscellaneous Civil Application No.47 of 2014 is allowed. Suit filed by the plaintiffs is restored to its original position;
- b. Registry is directed to transmit the costs of Rs.10,000/- deposited by the petitioners in this Court to Tata Memorial Hospital and Cancer Research Institute, Parel, Mumbai, forthwith;
- c. Rule is made absolute accordingly;
- d. Parties to act on the authenticated copy of this order.

(R. G. KETKAR, J.)

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