

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.350 OF 2017

Harshavardhan Balkrishna Shitole and another ... Petitioners
Vs.
Gajanan Raghunath Deshpande ... Respondent

Mr. Pramod J. Pawar for Petitioners.
Mr. V. A. Desai i/b. Mr. Sanjay Kshirsagar for Respondent.

CORAM : R. G. KETKAR, J.
DATE : FEBRUARY 28, 2017

P.C. :

Heard Mr. Pawar, learned Counsel for petitioners and Mr. Desai, learned Counsel for respondent at length. Rule. Mr. Desai waives service for respondent. Having regard to the narrow controversy raised in this Petition as also at the request and by consent of the parties, Rule is made returnable forthwith and the Petition is taken up for final hearing.

2. By this Petition, petitioners have challenged the order dated 15.11.2016 passed by the learned 6th Joint Civil Judge, Senior Division, Pune in Miscellaneous Application No.1127 of 2014. By that order the learned trial Judge rejected the application made by the petitioners / plaintiffs for restoration of the Suit on the ground that Rojnama shows that plaintiffs and their Advocate remained absent on 08.08.2014, 26.08.2014 and 11.09.2014. Though petitioners contended their Advocate was busy in another Court on 11.09.2014, the said contention was not substantiated.

3. Mr. Pawar assures that though in the past, plaintiffs and their Advocate remained absent, plaintiffs will ensure that they and their Advocate will remain present on the date so fixed by this Court and that

they will extend full co-operation for disposal of the Suit in a time bound manner.

4. Mr. Desai submitted that respondent is aged about 82 years and Suit is pending since 2012.

5. In view thereof, impugned order is set aside and Suit is restored to the file of the trial Court. Parties to appear before the trial Court on 15.03.2017 and for that purpose, no fresh notice be issued to them. In case the petitioners-plaintiffs and their Advocates remain absent on the dates so fixed by the trial Court, the impugned order shall stand revived without further reference to the Court. Having regard to the fact that the respondent is 82 years old, the learned trial Judge is requested to decide the Suit as expeditiously as possible and preferably within one year from the production of the authenticated copy of this order. All contentions of the parties on merits are expressly kept open. Rule is made absolute in the aforesaid terms with no order as to costs.

6. All the parties, including the trial Court, to act upon the authenticated copy of this order.

(R. G. KETKAR, J.)

Minal Parab