

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

901 WRIT PETITION NO. 10953 OF 2014

HARI DATTOBA PHISKE AND OTHERS
VERSUS
SAU. ANUSUYABAI SHIVBA MALWAD (PATIL) AND OTHERS

...

Advocate for Petitioners : Mrs. Anjali Dube (Bajpai).

Advocate for Respondent Nos.1 & 2 : Mr. Patel Shaikh Ashpak Taher h/f
Mr.S.D. Tawshikar.

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CORAM : **V. L. ACHLIYA, J.**

DATE : 19th April, 2018.

ORDER:

. By this petition, the Petitioners have challenged the order dated 24th July, 2014 passed by 9th Joint Civil Judge Junior Division, Latur. By the impugned order, the Trial Court has set aside the order of dismissal of suit and restored the suit subject to costs of Rs.2,000/-.

2 Heard the learned counsel for the Petitioners and the learned counsel appearing for Respondent Nos.1 and 2. Perused the impugned order.

3 The learned counsel for Petitioners assailed the impugned order with contention that the order impugned is perverse and passed

in arbitrary manner. It is contended that the affidavit by way of examination-in-chief was filed in the year 2005. For the period of three years, the witness for the Plaintiffs has not stepped into the witness box, which leads to passing of impugned order. By referring the overall facts of the case, the learned counsel submits that the reasons assigned are not sufficient to set aside the order of dismissal of suit. It is further contended that there was a delay of one year in filing the application, which was also not taken into consideration by the Trial Court.

4 On the other hand, the learned counsel for Respondent Nos.1 and 2 supported the order passed and submits that Plaintiffs have set forth reasons sufficient to explain the absence of Plaintiffs on the day of dismissal of suit and prior to that. It is further contended that for the purpose of condoning the delay, separate application was filed, which was allowed by the impugned order dated 3rd November, 2012.

5 On due consideration of submissions advanced, I am of the view that no case is made out to call for interference in exercise of writ jurisdiction under Article 227 of the Constitution of India. While

exercising the power under Article 227 of the Constitution of India, this Court is not supposed to deal with the case as if deciding the case as a Court of appeal. By order dated 3rd November, 2012, the application seeking condonation of delay was heard and decided by the Trial Court in favour of Respondent Nos.1 and 2 - Plaintiffs. Perusal of the impugned order reveals that the Trial Court has considered the rival pleadings and evidence adduced in support of the application seeking restoration of suit. On due consideration of the facts and circumstance of the case and evidence, the order dismissing the suit dated 8th March, 2011 has been set aside. The reasons and findings recorded by the Trial Court cannot said to be perverse nor any case of wrongful exercise of jurisdiction has been made out. I am, therefore, not inclined to entertain the petition.

6 Since the suit is of the year 2005, the Trial Court is directed to expedite the hearing of the case and decide the suit as expeditiously as possible preferably within one year from the date of communication of the order. The parties are directed to appear before the Trial Court on 5th June, 2018. On appearance of the parties, the Trial Court is directed to fix the date for recording of evidence. The parties are directed to cooperate with Trial Court in expeditious

disposal of the suit.

7 In the result, the petition is dismissed with no order as to costs.

[V. L. ACHLIYA, J.]

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