

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

927 WRIT PETITION NO. 6808 OF 2017

NEELAVATI BHASKAR GAIKWAD
VERSUS
DADARAO JAYWANTRAO JAWALE

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Advocate for Petitioner : Mr. M. P. Tripathi
Advocate for Respondent : Mr. A. M. Kulkarni

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CORAM: V. K. JADHAV, J.
DATED: 13th February, 2018.

PER COURT :-

1. By consent of learned counsel for the parties, heard finally at admission stage.

2. The learned counsel for the petitioner-original defendant submits that the Regular Civil Suit No. 237 of 2000 instituted by the respondent-plaintiff for declaration of ownership and perpetual injunction came to be dismissed in default on 20.10.2007. The trial Court has condoned the delay by separate order, however, allowed the Civil Miscellaneous Application No. 48 of 2010 by impugned order dated 02.08.2016 and restored the suit to its original stage subject to payment of costs of Rs.500/-. The learned counsel submits that there are no satisfactory reasons put-forth by the respondent-plaintiff for restoration of the suit. The Trial Court in very casual manner has

allowed the application and restored the suit to its original number.

3. The learned counsel for the respondent-original plaintiff submits that the plaintiff is an old aged person and is suffering from various ailments. He was hospitalized during the period when his suit was called upon for hearing and as such it was dismissed in default. The respondent-plaintiff has produced the medical evidence in an application seeking condonation of delay in filing the application for restoration of the suit and after satisfied with the medical evidence produced on record, the trial court by separate order in M. A. No. 10 of 2008 condoned the delay in filing restoration application.

4. On perusal of the impugned order, it appears that the respondent-plaintiff has filed the said Miscellaneous Application No. 48 of 2010 mainly on the ground that he was seriously ill from 17.3.2007 and he had taken treatment from Mauli Hospital, Ambajogai, Ashiwani Hospital, Solapur and Sai Clinic, Osmanabad. He has also under gone heart surgery and was under treatment. Thus, on 20.10.2007 he could not remain present before the Trial Court and as such suit came to be dismissed in default. The medical certificates to that effect are produced in the application seeking condonation of delay and on

believing those certificates, the Trial Court has condoned the delay. The Trial Court has also observed that considering the nature of the suit, the valuable right in landed property is involved. In view of the same and also considering the age of the respondent-plaintiff who is 87 years of age, the Trial Court has restored the Regular Civil Suit No. 237 of 2000.

5. In view of the above, I do not find any fault in impugned order. Writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

vsm