

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

CIVIL REVISION APPLICATION NO. 365 OF 2017

Somaraya Bapu Koli	...	Applicant
V/s.		
Sou Saritabai Parshuram Jadhav	...	Respondent

- Mr.Sachinkumar Rajepandhare for the Applicant.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 26th FEBRUARY, 2018.

P.C. :

1] Heard learned counsel for the Applicant. The Respondent is absent though duly served with notice.

2] This Civil Revision Application is preferred under Section 115 of the Civil Procedure Code (*for short, "C.P.C."*) challenging the order dated 13th January, 2017, passed by the 2nd Jt. Civil Judge Junior Division, Mohol, thereby allowing Civil Miscellaneous Application No.23 of 2014. The said application was preferred by the Respondent/Plaintiff for restoration of the suit bearing Regular Civil Suit No.41 of 2012 (previous number, Special Civil Suit No.133 of 2010).

3] A separate application was also filed for condonation of delay of 8 months and 7 days, which had occurred in filing the application for restoration of the suit.

4] The ground given by the Respondent before the trial Court for her absence at the time when the suit came for hearing was her illness. In support of the said ground, she examined herself and also produced on record the Discharge Summary and Prescription Booklet, which clearly go to show that she was admitted in the hospital from 7th December, 2013 to 9th December, 2013 with the history of viral fever and hypothyroidism.

5] It may be true that, she was admitted in the hospital only for two days and thereafter, she was discharged but then her evidence goes to show that thereafter also she was not keeping well and doctor has advised her to take rest. As a result thereof, she could not meet her Advocate and remained absent in the Court to proceed with the hearing of the suit.

6] Her evidence, even after cross-examination by learned counsel for the Applicant, has remained un-shattered on record and there is no reason to disbelieve the same, which makes out sufficient ground and that ground appears to be genuine and bonafide for her

not to remain present in the trial Court, when the suit came up for hearing. If on that count, the suit came to be dismissed for default, then in my considered opinion, the trial Court, has rightly allowed the Application for restoration of the suit, condoning the delay, which has occurred in filing the application for restoration of the suit. The trial Court has also allowed the application subject to costs of Rs.2,000/- to be paid to the Applicant and Rs.200/- to be paid to the Legal Aid. The costs is already paid.

7] In view thereof, no interference is warranted in the impugned order of the trial Court, as the interests of justice always require that the matter be decided on merits, instead of being thrown out on technical ground viz. for absence of the party; especially when absence of the party is explained on bonafide cause. Hence, Civil Revision Application being without merits, stands dismissed.

8] On the request of learned counsel for the Applicant, the hearing of the suit is however expedited.

[DR.SHALINI PHANSALKAR-JOSHI, J.]