

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 2017 OF 2018
(FOR RESTORATION)
IN
WRIT PETITION NO. 4444 OF 1994

Smt. Gaurabai Gavasne
(since deceased through Lrs.)

.. Applicants

vs.

Balasaheb @ Siddheshwar M. Shete
and ors.

.. Respondents

Ms P.N. Dabholkar for the Applicants.

Mr. M.R. Deshpande for Respondent Nos.1,2 and 4.

CORAM : M. S. SONAK, J.

DATE : 10 DECEMBER 2018.

P.C. :-

1] Heard the learned counsel for the parties.

2] The reasons set out in the application for condonation of delay and restoration are not very convincing, several opportunities were granted to the applicants to take steps and to proceed with the matter. Ultimately, since this was not done, this Court was constrained to dismiss the writ petition for non-prosecution by order dated 24th March 2017.

3] The order dated 24th March 2017 reads as follows:

“On 17 February 2017 following order was passed-

'On 13 January 2017 following order was passed :-

“ This Petition is pending since 1994. On 18 February 2011 the Petition was dismissed for non prosecution. Thereafter, the Petition was restored on 25

March 2011. On 23 January 2012 it was noted that 1st and 2nd Respondents have expired and the Petition is abated as against them.

2. On 21 November 2016 none appeared. Directions were issued to reconstruct the papers. It appears that after restoration, papers have not been reconstructed. The matter is notified for dismissal.

From the above orders, it is clear that the Petitioners have lost interest in prosecuting this Petition. Hence, it is dismissed for non prosecution.

At 3.00 P.M.

3. The learned Counsel for the Petitioners appears and prays for further time for reconstruction of papers. The time granted under order dated 21 November 2016 is extended for a period of four weeks from today. Stand over to 9 February 2017.”

2. The Advocate for the Petitioners has not filed Vakalatnama till date. The Petition is already stands abated as against Respondent Nos. 1 and 2.

2. The learned counsel for Respondents is present. The learned counsel for the Respondents states that the Respondent No.1 and 3 have expired and not Respondent No.2. In any case it appears that no steps have been taken even against these Respondents. The Advocate who had appeared earlier and sought restoration of the matter after it was dismissed for non-prosecution, has not filed vakalatnama. Even today it appears that the Petitioners are not interested in prosecuting this Petition. The Writ Petition is accordingly dismissed for non-prosecution”.

4] Today, the learned counsel for the applicants, however submits that the parties are from Solapur. She submits that there was miscommunication with the Advocates and therefore, there was deficiency in matters of compliances. She points out that even the advocates had difficulties in contacting the parties and all this resulted in deficiency in effectively pursuing this matter. The learned counsel for the applicants points out that the circumstances in which

they could not appear earlier in the matter. She submits that her name was not displayed on the Board because there was no proper Vakalatnama filed in her name. She submits that all this factors contributed to non-attendance of the matter. She further submits that all this factors were neither deliberate nor mala fide. She submits that the applicants and their advocates have always expressed readiness and willingness to proceed with the matter. She therefore, submits that lenient view may be taken and some indulgence be shown to the applicants.

5] On the basis of instructions from some of the applicants who are present in the Court, she states that the applicants will pay costs of Rs.25,000/- to the respondents and further will also deposit compensation at the rate of Rs.8000/- per month, in case the matter is restored. She states that compensation at the rate of Rs.8000/- per month can be deposited even with effect from 24th March 2017, which is the date on which this petition came to be dismissed.

6] The learned counsel for the respondents submits that this is not a fit case to show any indulgence to the applicants. He points out that several opportunities were granted to the applicants. He points out that the applicants are affluent businessmen who have already acquired huge alternate premises. For all these reasons, he submits that Civil Application may be dismissed.

7] Having considered the rival submissions and perused the material on record though, as noted earlier, the reasons given are

not very convincing, some indulgence can be shown to the applicants now that they offered to pay costs and deposit the compensation at the market rates. Ultimately, the fact that the parties are from Solapur and there was some serious difficulties of communication, also, cannot be completely ignored.

8] Accordingly, this Civil Application is disposed of with the following order:

- (a) Delay is condoned;
- (b) The order of dismissal of the petitioner dated 24th March 2017 is recalled and the petition is ordered to be restored to the file, subject to the following conditions:
 - (i) The applicants shall, within four weeks from today, pay / deposit the costs of Rs.25,000/- in this Court. If such amount is deposited, then, the respondents shall be at liberty to withdraw the same unconditionally;
 - (ii) The applicants shall deposit in this Court compensation at the rate of Rs.8000/- per month effective from 1st April 2017, within a period of two months from today. If such compensation is deposited, the Registry to invest the same in a Nationalised Bank;
 - (iii) The applicants shall continue to deposit the compensation at the rate of Rs.8000/- per month on or before the 5th day of each succeeding month until disposal of the writ petition. The first of such deposit to be made on or before 5th February 2019;
 - (iv) In case there is non-compliance with the aforesaid

conditions, this Civil Application shall be deemed to have been dismissed without any further reference to the Court;

(v) If the conditions are complied with, place the Writ Petition for final disposal on 21st February 2019.

9] Civil Application is disposed of with the aforesaid terms.

(M. S. SONAK, J.)