

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****WRIT PETITION NO. 7124 OF 2016****Suhas Digambar Thakur****..... Petitioner****VERSUS****Municipal Corporation of the
City of Pune****..... Respondent**

Mr.Uday Nighot for the Petitioner.

Mr.R.M.Pethe for the Respondent no.1.

CORAM : R.D. DHANUKA, J.**DATE : 20th AUGUST, 2018****P.C.**

By this writ petition filed under Article 227 of the Constitution of India, the petitioner has impugned the order dated 15th February,2016 passed by the learned Civil Judge, Junior Division rejecting the application filed by the petitioner (original plaintiff) under order 9 rule 3 read with Order 17 Rules 2 and 3 of the Code of Civil Procedure, 1908 for restoration of the RCS No.729 of 2011.

2. I have heard the learned counsel appearing for the parties and I have perused the record. In my view, the applicant has made out a case for restoration of the civil suit. The applicant was prevented by sufficient cause to remain present before the learned trial judge when the matter was called out and was dismissed for default though the applicant had produced the medical certificate in support of the submission. The applicant could not remain present due to his sickness. The learned trial judge has disbelieved the certificate and has

rejected the application filed by the applicant.

3. In my view the applicant has made out a case for interference in the order passed by the learned Civil Judge, Junior Division (PMC) Pune on 15th February,2016. The order dated 15th February,2016 is accordingly set aside.

4. The application (Ex.10) filed by the applicant in Civil M.A.No. 423 of 2014 is allowed.

5. RCS No.729 of 2011 is restored to file and shall be proceeded with on its own merit.

6. Writ petition is allowed in the aforesaid terms. No order as to costs.

[R.D. DHANUKA, J.]