

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.13381/2018

Shivaji Uttam Jadhav & Ors.

... Petitioners

V/s.

Sudhakar Vinayak Khune & Ors.

... Respondents

Mr. Sujeet R. Bugade for the Petitioners

CORAM: K.K. TATED, J.

DATED : NOVEMBER 30, 2018

P.C. :

1 Heard. By this petition under Article 227 of the Constitution of India the Petitioner challenges the order dated 04.08.2018 passed by the Jt. Civil Judge, Senior Division, Barshi below Exhibit- 1 in Civil Misc. Application No.14/2005 allowing the Respondent Plaintiff's Application for restoration of Regular Civil Suit No. 258/1998 at its original stage.

2 The learned counsel for the Petitioner submits that the Trial Court has failed to consider the evidence of the original Plaintiff's son at the time of deciding the Application . He submits that the Plaintiff's son has failed to give proper reason for restoration of the said suit. Therefore, the order dated 04.08.2018 passed by the Trial Court is liable to be set aside.

3 Heard the learned counsel for the Petitioner at length.

4 In the present proceedings, Regular Civil Suit No. 258/1998 stood dismissed on 18.01.2005. Thereafter the original Plaintiff has made an Application for restoration in short time i.e. on 25.02.2005. In that Application, the original Plaintiff has specifically stated that, it remained on the part of his advocate in trial court to inform him the next date. Therefore, no one was present on 18.01.2005 when the matter was called out. He submits that thereafter he was out of town. Not only that, he has specifically stated in paragraph 4 of the Application that his daughter was delivered. She was not keeping well. Therefore he was with her daughter to take care. During the pendency of the said Civil Misc. Application No.14/2005, the original Plaintiff Vinayak Kashinath Khune died, therefore, the Respondent was brought on record as legal heir of the Plaintiff.

5 Because of mistake on the part of an Advocate, a litigant should not suffer and considering the fact that the Application for restoration was filed within 35 days with valid reason and same was considered by the Trial Court, I do not find any substance in the Writ Petition.

6 Hence, the Writ Petition stands rejected. No order as to costs.

(K. K. TATED, J.)