

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

APPEAL AGAINST ORDER NO.23/2018

Shri Sadashiv Pitthu Kurzekar and another

..Vs..

M/s Sunsys Venture Private Limited Raipur, through its Directors

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri S.N. Gaikwad, Advocate for the appellants.

CORAM : Z.A. HAQ, J.

DATE : 9.4.2018.

Heard.

The appellants / original defendants have challenged the order passed by the learned trial Judge by which the application (Exh. No.15) filed by the respondents / original plaintiffs praying for restoration of civil suit dismissed in default, is allowed.

The impugned order is challenged on the ground that the delay in filing the application praying for restoration of civil suit is not properly explained by the plaintiffs and further that the explanation given by the plaintiffs for not attending the proceedings cannot be a ground for restoring the civil suit.

In paragraph No.13 of the impugned order the learned trial Judge has recorded the reasons which weighed with him for allowing the application filed by the plaintiffs and which reads as follows:

“13. After going through all the above discussion and perusal of record and proceedings of the Spl.C.S. No.40/2015, it is seen that, on 07.11.206 (sic 2006) issues were framed and matter was posted for evidence on 29.11.2016. Subsequent dates were given as 05.12.2016, 23.12.2016 and 13.01.2017 and on 13.01.2017 suit was dismissed in default. Roznamas of all these dates shows plaintiffs' counsels' continuous absence in the said proceeding. The Roznamas of all these dates show that, the steps were not taken by plaintiffs counsels. It is the settled law of the land, that the client must not suffer due to absence / negligence on the part of the Advocate. Within a short span of 1 ½ months, from the stage of evidence, the suit was dismissed. Withing (sic within) a one month of dismissal of suit, the present application for restoration was filed. It means, the applicants are bonafide in contesting the matter. If the Special Civil Suit bearing No.40/2015 is restored, no harm is going to be caused to the non applicants. Both the parties are having equal legal rights to contest the suit on merits.”

The reasons recorded by the learned trial Judge cannot be faulted with and it cannot be said that the learned trial Judge has overstepped his jurisdiction. I see no reason to interfere with the impugned order. The appeal is **dismissed**. No costs.

JUDGE