

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

19 WRIT PETITION NO.6085 OF 2018

1. Rajaram S/o. Kisanrao Potdar,
Age. 59 years, Occ. Service,
R/o. Lohara (Bk), Tq. Lohara,
2. Lalita W/o. Rajaram Potdar,
Age. 55 years, Occ. Service,
R/o. As above.
District Omerga.

Versus

Bhimashankar S/o. Gundappa Palke,
Age. 63 years, Occ. Agriculture,
R/o. Lohara (Bk), Tq. Lohara,
District Omerga.

WITH
WRIT PETITION NO. 7052 OF 2018

Lalita W/o. Rajaram Potdar,
Age. 49 years, Occ. household,
R/o. Lohara (Bk), Tq. Lohara,
District Osmanabad.

Versus

Bhimashankar S/o. Gundappa Palke,
Age. 59 years, Occ. Agriculture,
R/o. Lohara (Bk), Tq. Lohara,
District Osmanabad.

Advocate for Petitioners : Ms. Anjali Dube (Bajpai).
Advocate for Respondent : Mr. N.B. Narwade.

CORAM : RAVINDRA V. GHUGE, J.
Dated : February 11, 2019

Oral Judgment :

1. Rule. Rule made returnable forthwith and heard finally by the consent of the parties.

2. Both these petitioners, who are the original plaintiffs in their respective suits and who are the appellants in Regular Civil Appeal Nos. 28 and 27 of 2010, are aggrieved by the order dated 30.11.2016, by which, both the Appeals have been dismissed in default for the second time.

3. I have considered the strenuous submissions of the learned advocates. The respondent who is the original defendant, vehemently submits that both these petitions deserve to be dismissed as the Appeals preferred by these original plaintiffs have been dismissed in default for the second time before the first appellate Court.

4. I find that these plaintiffs had preferred RCS Nos. 79 of 2008 and 47 of 2008 respectively. Immovable house properties are involved in the suits. Both the suits have been dismissed after a complete adjudication. The plaintiffs, therefore, preferred the two Regular Civil Appeals noted above. Both these Appeals were dismissed in default on 14.10.2014, after a pendency of four years.

5. The petitioner preferred the Civil Miscellaneous Application Nos. 31/2014 and 32/2014. Both these petitions were allowed by order dated 13.09.2016, when the learned advocate appearing for these petitioners gave a personal undertaking to the Court that the Appeals would be worked out without further delay. Yet, the said Appeals were not worked out for a period of about two months. On 04.11.2016, the concerned advocate withdrew his vakalatnama, which in my view, should not have been done as such a conduct cannot be countenanced. However, after the withdrawal of the said vakalatnama, these petitioners failed to engage a new advocate for whatever reasons. They paid the costs for an adjournment on 04.11.2016. Again an adjournment was sought on 13.11.2016, which was refused and the appellate Court passed the second impugned order dismissing both the Appeals.

6. Learned advocate for the respondent submits in the alternative that if this Court is inclined to entertain this Writ Petition, heavy costs may be imposed and one portion of the costs can be donated for the treatment of poor patients.

7. Learned advocate for the petitioners submits that she has personally scrutinized the medical papers of these petitioners who are *inter se* husband and wife. Both are diabetic patients. The wife has

undergone a hip joint replacement surgery and the husband has undergone a knee joint replacement surgery. She, therefore, submits that both these petitioners are unfortunately in a very bad situation and they are at the mercy of this Court.

8. Without laying down any precedent and in the light of the peculiar facts as recorded above, that these petitions are being entertained subject to imposition of costs. It also cannot be ignored that house properties are involved in the litigation and they may suffer an irreparable harm if their appeals are not restored.

9. In view of the above, these petitions are partly allowed with the following directions :

(a) The impugned orders dated 30.11.2016, are quashed and set aside.

(b) RCA No. 27 and 28 of 2010 are restored to the file of the learned District Judge-1, Omerga.

(c) These litigating parties shall now appear before the appellate Court on 04.03.2019 and will not seek an adjournment.

(d) The petitioners shall work out their Appeals on 04.03.2019, either through an advocate or in person or by filing of written notes of submission and will not be permitted to seek an adjournment.

(e) The appellate Court would endeavour to deliver its judgment on the merits of the Appeals on/or before 15.04.2019.

(f) The petitioner shall deposit an amount of Rs. 2,500/- each with the Government Medical College and Hospital, Aurangabad, through Medical Officer, High Court Dispensary, Aurangabad, either in cash or by Demand Draft (Demand Draft be drawn in the name of “Dean, Government Medical College and Hospital, Aurangabad Dengi Samiti”) on/or before 28.02.2019 and shall produce the deposit receipt before the appellate Court on 04.03.2019.

(g) Both these petitioners shall deposit an amount of Rs. 5,000/- each before the appellate Court on/or before 04.03.2019.

(h) These amounts shall be withdrawn by the defendant without conditions, from the appellate Court.

(i) If the costs amount is not deposited, this order shall stand recalled and the impugned order passed by the appellate Court dated 30.11.2016, shall stand restored without reference to the Court on 05.03.2019.

(RAVINDRA V. GHUGE, J.)