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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

939 CRA NO.69 OF 2019

BHAGWAN SAVLARAM BHALERAO
VERSUS
KAVITA SURESH SAPKAL

...

Adv.for Petitioner : Mr. Usmanpurkar Aniruddha S.
Mr. Patil Bipinchandra K Adv. For R/sole.

CORAM : P.R. BORA, J.
DATED : 9th July, 2019.

PER COURT:-

1. Heard the Civil Revision Application finally with consent of learned counsel appearing for the parties.

2. Order dated 14.12.2018 passed by Civil Judge, Junior Division, Bhokardan in Civil Misc. Application No.72/2018, is challenged in this revision. Vide the aforesaid order, the trial court has restored the suit, which was dismissed in default, subject to costs of Rs.3,000/-.

3. It is the contention of the petitioner that, without any sufficient reason, the trial court has restored the suit which was dismissed in default. Learned counsel Shri Usmanpurkar brought to my notice order dated 1st August, 2016 passed below Exh.1, whereby the suit was initially

(2)

dismissed in default, and pointed out that, despite availing several opportunities, the matter was not proceeded further and in such circumstances, it was dismissed in default.

4. The learned counsel further submitted that, though no new ground was made out in the Misc. Application filed by the applicant, the trial court has taken a different view than taken by it earlier and has thereby restored the original suit. The learned counsel, therefore, prayed for setting aside the impugned order.

5. Learned counsel appearing for respondent has supported the impugned order. Para 9 of the impugned order is material, which I reproduce herein below, -

"9. Similarly, in this matter while condoning the delay for filing application for restoration of suit Hon'ble High Court in Kavita Suresh Sapkal Vs Bhagwan Savalaram Bhalerao, writ petition No.453/2018 dated 26/03/2018 observed that, "it is apparent that the petitioner, who is a lady litigant, is litigating against the defendant. Ancestral property is the subject matter of the suit. She derives no advantage

(3)

by neglecting her suit and she would be rendered remediless if the delay is not condoned and the suit is not restored." So, considering the above facts and circumstances, I am satisfied that, there was sufficient cause for non-appearance of applicant when suit was called on for hearing. Therefore, application deserves to be allowed."

6. On perusal of the impugned order, it does not appear to me that any error has been committed by the Trial court in passing the impugned order, thereby restoring the suit filed by the present applicant.

7. Considering the view, as has been taken by the court, which according to me, appears to be a reasonable view, I do not intend to cause any interference in the impugned order. Ultimately the matters are to be decided on merits. The lower court has aptly penalized the plaintiff by imposing adequate costs upon him. In the circumstances, the civil revision application being devoid of any substance is dismissed, however, without any order as to costs.

8. The trial court shall expedite hearing of

(4)

the subject suit and decide the same as expeditiously as possible, by giving due opportunities to the parties. The plaintiff as well as the defendant, without taking any unreasonable adjournment, shall proceed with the matter.

(P.R. BORA)
JUDGE

BDV