

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6087 OF 2014

Khurshidabee w/o Rahimkhan Mansuri

Petitioner

Versus

Mansuri Salim Sakin Pinjari
& others

Respondents

Mr. A.N. Nagargoje, Advocate for the petitioner.

Mr. S.K. Shinde, Advocate for respondent nos. 1 and 3.

CORAM : M.S. KARNIK, J.

DATE : 13th August, 2019.

PER COURT :

1. Heard learned counsel for the petitioner.
2. My attention is invited to the order passed by the trial Court dismissing the suit in default. Thereafter an application is made under Order IX Rule 9 of the Code of Civil Procedure by plaintiffs for restoration of the suit. In the said application, it is mainly pleaded that plaintiff no. 1 suffered from a medical ailment and was under treatment. Trial Court rejected the application since the trial Court did not find the explanation of the plaintiffs to be satisfactory.
3. Plaintiffs therefore approached the appellate Court by filing MCA No. 40/2009 under Order XLIII Rule 1(c) of the Code of Civil Procedure. Appellate Court was of the opinion that there is some material on record to indicate the ailment suffered by plaintiff no.1. Appellate Court observed that defendant no.1 has indirectly

admitted the fact that plaintiff no. 1 was having some kind of ailment and that he was taking medical treatment as an outdoor patient. Appellate Court was of the view that liberal approach is to be adopted in such matters and therefore, allowed the suit to be restored subject to payment of cost of Rs. 2,000/-.

4. In this view of the matter, though I am not inclined to interfere with the order passed by the appellate Court, I am of the opinion that having regard to the fact that the suit is of the year 1999, it would be appropriate if the cost as awarded by the appellate Court is increased. I am of the opinion that plaintiffs should be made to pay additional sum of Rs.3,000/- to the defendants as cost, over and above the cost of Rs.2,000/- which has already been paid.

5. Considering that the suit is of the year 1999 and as stated by learned counsel for the petitioner that the suit is at the stage of recording of evidence, the trial Court is requested to hear and decide the suit as expeditiously as possible and in any event within a period of one year from today. It is made clear that the respondents-plaintiffs will not seek unnecessary adjournment and will co-operate with the trial Court in deciding the suit expeditiously. Cost to be deposited in the trial Court.

6. Writ petition stands disposed of accordingly.

(M.S. KARNIK, J.)

dyb/