

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12800 OF 2016
(Ganesh Motilal Rathi Vs. The State of Maharashtra and others)

Mrs.M.A.Kulkarni, learned Advocate for the petitioner.
Mr.S.R.Yadav, learned AGP for respondent No.1.
Mr.S.V.Natu, Advocate for respondent No.3.

(CORAM : Ravindra V.Ghuge, J.)

DATE : 18/02/2019

PER COURT :

1. On 07/02/2018, I had passed the following order :-

“1. The petitioner is aggrieved by the order dated 03/09/2015, passed by the Trial Court refusing to restore RCS No.165/2012, which was dismissed in default on 06/08/2014. The petitioner is also aggrieved by the order dated 28/07/2016, by which, the Appellate Court has rejected Miscellaneous Civil Appeal No.32/2015.

2. The suit lodged by the petitioner in the year 2012 was dismissed in default on 06/08/2014, as evidence was not led. M.C.A.No.168/2014, was filed by the petitioner seeking restoration on 04/09/2014. This was within 30 days. Same was dismissed on 03/09/2015, and the appeal was dismissed on 28/07/2016. The subject of the suit is with regard to two house properties in the Municipal Council of Ambajogai. By the impugned orders, an irreparable harm and serious prejudice

would be caused to the petitioner, is the contention.

3. *Issue notice to respondent Nos. 1 to 3, returnable on 16/03/2018. Learned AGP, waives service for respondent No.1."*

2. The petitioner/original plaintiff is aggrieved by the order dated 06/08/2014 passed by the Trial Court dismissing R.C.S.No. 165/2012 (Old SCS No.56/2008), in default. The petitioner is also aggrieved by the order dated 03/09/2015 passed by the same Court rejecting MCA No.168/2014 and by the order dated 28/07/2016 passed by the Appellate Court rejecting MCA No.32/2015.

3. I have heard the learned Advocate for the petitioner, the learned Advocate on behalf of respondent No.3 and the learned AGP on behalf of respondent No.1. Despite service of Court notice, none appears for respondent No.2. Respondent No.4 has been deleted in view of his demise.

4. The issue in this petition is with regard to restoration of a suit which was dismissed in default on 06/08/2014 as the plaintiff failed to lead evidence on the ground of collecting documents. Within 30 days, an application under Order IX Rule 4 of the CPC was filed on

05/09/2014. By order dated 03/09/2015, the Trial Court rejected the said application on the ground that convincing reasons have not been cited. The Misc.Civil Appeal preferred by the petitioner has also been dismissed by order dated 28/07/2016.

5. The suit preferred by the petitioner is for declaration and recovery of the amount of securities alongwith interest. It was set out in the suit that the father of the petitioner had passed away on 03/06/1980. The deceased Motilal and his wife Premalabai @ Dagdabai did not have any child. The widow Premalabai is said to have succeeded to the estate of deceased Motilal as a Class I heir. The plaintiff Ganesh is said to have been adopted by the widow.

6. It, therefore, cannot be ignored that the issue before the Trial Court is with regard to the movable properties. If the suit is not restored, an irreparable harm, serious prejudice and manifest inconvenience would be caused to the petitioner and he would be deprived of all the above stated properties.

7. It is settled law that if an application is filed for seeking restoration within 30 days from the date of the DID order, the Court should deal with such an application liberally. If laches or ulterior /

oblique motives are attributable to the conduct of a litigant, such an application can be looked at differently.

8. The learned AGP and the learned Advocate for respondent No.3, though opposed this petition, submit that they do not find any issue of laches or ulterior motives attributable to the conduct of the petitioner/plaintiff.

9. In my view, besides the above, if the plaintiff was to derive any undue advantage by delaying his own suit, his request for restoration would not be entertained. I find no element of undue advantage which the petitioner is likely to gain by delaying his suit. In fact, considering that he could not produce certain documents on record, led to the dismissal of his suit.

10. In my view, when an application for restoration is filed within 30 days, a pragmatic approach could be adopted rather than taking a pedantic view.

11. It is apparent from the impugned orders dated 03/09/2015 and 28/07/2016 that the petitioner had put forth certain grounds

and had prayed for the restoration of his suit in view of the filing of his application within 30 days. In this backdrop, a last opportunity could have been granted by imposing certain conditions and the suit could have been restored.

12. Considering the above, this petition is allowed. The impugned orders dated 03/09/2015 and 28/07/2016 are quashed and set aside. The order dated 06/08/2014 dismissing the suit in default is set aside and RCS No.165/2012 is restored to the file of the Trial Court. The learned AGP and the learned Advocate appearing on behalf of the State and the Bank respectively, submit that the costs could be donated for the treatment of poor patients. As such, the petitioner shall deposit an amount of Rs.10,000/- in this Court 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 12/03/2019 and shall produce the receipt of such deposit before the Trial Court on 16/03/2019. The petitioner shall commence the recording of oral evidence on his behalf on 16/03/2019. Copy of this order obtained from the official

website of the Bombay High Court shall be placed before the Trial Court.

13. Since the suit was lodged in 2008, the Trial Court would endeavour to decide the same as expeditiously as possible and in any case on or before 31/12/2019. The petitioner would be precluded from seeking unnecessary adjournments.

(Ravindra V.Ghuge, J.)