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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.9155 OF 2013

Padmakar Vinayak Kankal & Ors.	..Petitioners.
V/s.	
Rajesh Balkrishna Divate & Ors.	..Respondents.

WRIT PETITION NO.9682 OF 2013

Satish Manohar Gholap	..Petitioner.
V/s.	
Rajesh Balkrishna Divate & Ors.	..Respondents.

Ms.Prabha Badadare for the petitioners in WP/9155/2013.

None for petitioner in WP/9682/2013.

None for the respondents.

CORAM : M.S.SONAK, J.

DATE : MARCH 22, 2019

P.C.:-

Heard Ms.Badadare, learned counsel for the petitioners.

2. Challenge is to the orders dated April 4, 2013 and May 4, 2013 by which learned trial has set aside his earlier order of dismissing the suit in default and restoring the suit subject to payment of costs of Rs.10,000/-.

3. Learned counsel for the petitioner submits that this restoration order has been passed almost 16 years after the date of

institution of the suit. She points out that in the meanwhile, several events have taken place which will render the relief applied for in the suit as infructuous. She points out that the reason for restoration does not point out the any satisfactorily explanation. For all these reasons, she submits that the order be set aside.

4. In the present case, the application for restoration was made within the prescribed period of limitation. Learned trial Judge has exercised discretion in a positive manner and accepted the cause shown as sufficient cause. It cannot be said that there is any unreasonableness or arbitrariness in the approach of learned trial Judge. To state that several transactions have taken place is not a ground to interfere with the impugned order. Ultimately, these matters will have to be taken into consideration by learned trial Judge while deciding the suit.

5. Since there is no jurisdiction error and further, it cannot be said that the discretion has been exercised unreasonably by learned trial Judge, no case is made out to warrant interference in the impugned order.

6. The stay on the further proceedings granted by this Court is vacated. Time limit for payment of costs is, however, extended by a period of two weeks from the date on which the authenticated copy of this order is filed before learned trial Judge and furnished to the respondent i.e. the original plaintiff.

7. The parties to appear before learned trial Judge on April 14, 2019 at 11.00 a.m. and file an authenticated copy of this order.
8. Since respondent-plaintiff is not present, learned trial Judge is requested to give notice to respondent-plaintiff for appearance so that he is in a position to pay the costs within 15 days from the date of service of the order.
9. Accordingly, the petition is dismissed.
10. There shall be no order as to costs.

WRIT PETITION NO.9682 OF 2013

None present for the petitioner.

2. In view of the order in Writ Petition No.9155 of 2013 in which the same impugned order was under challenge, even this petition is liable to be dismissed and is hereby dismissed.

(M.S.SONAK, J.)