

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.12616 OF 2018

Wasudev Shankar Kulkarni & Ors.	..Petitioners.
V/s.	
Ananda Pandurang Parit	..Respondent.

Mr.Gangadhar J.Sabnis for the petitioners.

Mr.Abhijit V.Desai for respondent.

CORAM : NITIN W. SAMBRE, J.

DATE : OCTOBER 7, 2019

P.C. :-

Heard counsel for the parties.

2. Suit for possession initiated by the petitioners-plaintiffs being Regular Civil Suit No.26/2014 came to be dismissed in default on February 4, 2013.

3. On April 30, 2014 i.e. after a period of more than 14 months, an application being M.A. No.26/2014 for restoration of the suit came to be moved on the following grounds :-

- (a) That the petitioners were not keeping good health in view of advanced age;
- (b) There was no communication about transfer of the

suit from one Court to another.

4. The said prayer for restoration of the suit came to be rejected vide order dated March 26, 2018. As such, this petition.

5. Learned counsel for the petitioners submits that all the petitioners are members of one family. However, the fact is not in dispute that the petitioners are in advanced age and they were finding it difficult to attend the day to day Court proceedings. A further submission is that the petitioners be put to conditions.

6. Learned counsel for the respondent-defendant while seeking rejection of the petition submits that the order is based on analysis of oral evidence. According to him, the cause cited in support of the prayer for restoration are also not established. As such, dismissal is sought.

7. Considered rival submissions.

8. From the cause title of the plaint, it can be gathered that the petitioners are in advanced age.

9. However, considering the evidence led, the petitioners are unable to establish the cause cited for restoration that they were not keeping good health, as they failed to produce any medical evidence. As regards the

absence of notice about the transfer, it is claimed by the petitioners-plaintiffs that in view of ill-health and advance age, they were not in regular touch with their lawyer.

10. Having regard to the age of the present petitioners and the cause cited, the delay caused in preferring the application for restoration should have been condoned subject to certain stringent conditions.

11. In my opinion, the petition can be allowed on the condition that the petitioners shall deposit Rs.25,000/- in the Civil Court within a period of four weeks from today. Subject to deposit of the aforesaid costs, the order impugned is hereby quashed and set aside and the suit is restored to the file.

12. The respondent shall be entitled to withdraw the amount of costs, if so deposited by the petitioners-plaintiffs.

13. In case if the costs is not deposited, the petition shall be deemed to have been dismissed without further reference to the Court.

14. The petition stands disposed of in the above terms.

(NITIN W. SAMBRE, J.)