

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 9597 OF 2019

Smt. Gangubai Vitthal Pacharne ... Petitioner.

V/s.

Mr. Genbhau Dhondiba Navale & Ors. ... Respondents.

Mr. Prashant Darandale, Advocate for the Petitioner.

CORAM : M. S. KARNIK, J.

DATE : SEPTEMBER 23, 2019.

PC :

1 Heard the learned counsel for the Petitioner. The Petitioner is the original Plaintiff. Suit is filed by him for partition and separate possession. The suit was dismissed for default on 07.02.2014. After a delay of 134 days, an application was filed being civil miscellaneous application no. 107 of 2014 for restoration. In the application it was stated that the plaintiff was not keeping well. Though the suit was dismissed for default on 07.02.2014, the Medical certificate produced by the plaintiff shows that the same was issued on 18.09.2014 and it reports about ill health of the plaintiff/ petitioner on 18.02.2014. The trial court was of the opinion that for the period

in question sufficient material has not been produced to indicate illness of the petitioner.

2 In my opinion, for the delay of 234 days caused in filing the application for restoration of the order dated 07.02.2014 in RCS No. 374 of 2008, the trial could have adopted liberal approach particularly in view of the reasons mentioned in the application. For that matter, for allowing the restoration application, the trial court could have imposed cost on the plaintiff as the suit was for partition and separate possession.

3 The Respondents have not appeared despite service of notice in terms of order dated 28.08.2019 passed by this court. Additional affidavit of service is filed by the petitioner, stating that the Respondents are served in terms of the said order passed by this court.

4 The orders impugned, therefore, deserve to be quashed and set aside.

5 Civil Misc. Application No.107 of 2014 for condoning the delay in preferring the application for

restoration of R.C.S. No. 374 of 2008 is allowed. The delay is condoned.

6 The restoration application preferred for restoration of R.C.S. No. 374 of 2008 shall be decided by the trial court on its own merits and in accordance with the law.

7 Writ petition is allowed subject to the cost of Rs. 1000/-.

(M. S. KARNIK, J.)

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