

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

MISC. CIVIL APPLICATION No.311/2018 (RESTORATION) IN W.P.NO.3935/2007(D)

Smt. Nalini w/o Bhaiyyaji Kudegavwe Vs. Dinesh Motiram Bele and others.

WITH

MISC. CIVIL APPLICATION No.1187/2017 (RESTORATION) IN
W.P.NO.5228/2007(D)

The Jai Hanuman Co-op(Tenants C-partnership) Hsg. Soc.Ltd. Vs. Dinesh M.Bele & ors.

Office notes Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri O.W.Gupta, Advocate for applicant in MCA No.311/2018.

Shri V.G.Bhamburkar, Advocate for non applicant no.1 in both MCAs.

Shri N.G.Solao, Advocate for applicant in MCA No.1187/2017 and for non
applicant nos. 2 to 5 in MCA No.311/2018.

CORAM : A.S.CHANDURKAR, J.

DATED : October 14, 2019

By these applications, the applicants seek restoration of the writ petitions that were dismissed for want of prosecution on 04.09.2017. In the applications it is stated that the learned counsel for the applicants could not remain present and due to misconception the writ petitions were dismissed in default for their absence. The applications are supported by affidavit filed by the learned counsel for the applicants.

Reply has been filed by the respondent no.1 stating therein that earlier order dated 12.01.2009 has not been complied with by the petitioner in Writ Petition No.5228/2007. As per that order the petitioner was to deposit Rs.3,000/- per month from January 2009 as occupation charges. That order has been complied with in part and as of October, 2018 an amount of Rs.1,08,000/- falls short. It is therefore submitted that since there is non-compliance with the earlier order, the writ petition does not deserve to be restored.

On hearing the learned counsel for the parties, it can be seen that the writ petitions were dismissed on account of absence of the learned counsel for the petitioners. Considering the averments made in the applications, I am inclined to restore the writ petitions. At the same time, the applicant in M.C.A. No.1187/2017 ought to comply with earlier directions issued on 12.01.2009 and 25.02.2010. To ensure that compliance, the following order is passed :

(I) Miscellaneous Civil Application No. 311/2018 is allowed. Writ Petition No.3935/2007 stands restored to file by recalling the order dated 04.07.2017.

(ii) Subject to the petitioner in Writ Petition No.5228/2007 depositing an amount of Rs.1,00,000/- in this Court within a period of four weeks from today, Miscellaneous Civil Application No.1187/2017 stands allowed. On such deposit, the writ petition shall stand restored by recalling the order dated 04.09.2017. If the amount is so deposited, the writ petitions be listed for hearing in the week commencing from 11.11.2019.

Miscellaneous Civil Applications are allowed and disposed of accordingly.

JUDGE

Andurkar.