

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

1032 WRIT PETITION NO.13902 OF 2017

SK AZEMABI IMRAN SHAIKH
VERSUS
SK RASHID SK IMRAN

.....
Advocate for Petitioner : Mr. S.S. Gangakhedkar
Advocate for Respondents : Mr. S.P. Salgar h/f Mr. S.S. Londhe
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CORAM : V. K. JADHAV, J.
DATED : 24th JANUARY, 2020

PER COURT:-

1. By consent of parties, heard finally at admission stage.
2. The petitioner is the original plaintiff. By order dated 16.04.2014 the trial court has dismissed the suit in terms of provisions of Order IX Rule 3 of Civil Procedure Code, 1908. The petitioner-original plaintiff has filed an application for restoration of suit alongwith application seeking condonation of delay of 641 days. The respondent has strongly resisted the said application by filing say. Learned C.J.J.D. Kalamnuri by order dated 05.05.2017 in Civil M.A. No. 23 of 2016 dismissed the application. Hence, this writ petition.
3. Learned counsel for the petitioner submits that the petitioner is old aged lady suffering from various old aged diseases. At the relevant time, she was almost bed ridden and therefore, could not attend the court. She is required to take regular treatment. The petitioner had received the suit property from her husband and respondent-original

defendant, who happened to be her son, got executed the sale deed in respect of the suit property by playing fraud on her. Learned counsel submits that the petitioner was suffering from knee problems and she used to take treatment at Nanded. Learned counsel submits that the petitioner is residing alone. The respondent-original defendant used to give her Rs.20/- per day for food, as stated by her in her cross examination. Learned counsel submits that the impugned order may be set aside and the petitioner-plaintiff may be given one chance to pursue her further proceeding in the suit.

4. Mr. Salgare, learned counsel h/f Mr. Londhe, learned counsel for the respondent submits that there is inordinate delay in filing application for restoration of suit. The delay is not explained satisfactorily. The trial court has therefore, rightly rejected the Civil M.A. No. 23 of 2016. No interference is required. Learned counsel for the respondent, in the alternate, submits that if this Court is inclined to condone the delay, the petitioner-plaintiff may be saddled with heavy costs.

5. The petitioner-plaintiff is old lady suffering from various old aged diseases. She had stated on oath that at the relevant time she was almost bed-ridden and therefore, could not attend the Court. She was required to take regular treatment for her knee problems. She is residing alone. Even though medical certificates are not placed on record, however, considering the nature of the litigation and further the

financial condition of the plaintiff, I am inclined to allow this writ petition. However, I am not inclined to saddle the petitioner with heavy costs because the petitioner in the cross examination has stated that she used to get Rs.20/- per day from her son i.e. respondent for her survival and even she has also initiated the maintenance proceedings. In view of above, I proceed to pass the following order:-

O R D E R

- I. The writ petition is hereby allowed.
- II. The order dated 05.05.2017 passed by the learned Civil Judge, Junior Division, Kalamnuri, in Civil M.A. No. 23 of 2016 is hereby quashed and set aside.
- III. The application bearing Civil M.A. No. 23 of 2016 is allowed to the extent of condonation of delay subject to payment of costs of Rs.100/- to be paid by the petitioner-plaintiff to the respondent-defendant.
- IV. Writ petition is accordingly disposed of. All points are kept open.
- V. The trial court shall decide the application seeking restoration on its own merits.

(V. K. JADHAV, J.)

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