

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 4975 OF 1998**

Smt. Kamla A. Bharwani,
(Since deceased)
Through- LRs. & Ors.

.....Petitioners.

Vs.

Mohan D. Chulani & Ors.

.....Respondents.

Mr. Rajesh Datar for the Petitioners.
Ms. Pallavi Dabholkar for Respondent Nos. 2(a)(b)(d) and (e).

CORAM : A. S. GADKARI, J.
DATE : 13th JANUARY, 2020.

ORAL JUDGMENT:-

By the present Petition under Article 227 of the Constitution of India, the Petitioner-landlord has impugned Orders dated 26th June, 1998 passed at 11.15 a.m. and at 3.00 p.m. in R.A.E. Suit No. 2571 of 1978 thereby, dismissing the Suit filed by the Petitioner and her Application for restoration of Suit, respectively.

2 Heard Mr. Datar, learned counsel for the Petitioners and Smt. Dabholkar, learned counsel for the Respondents. Perused the entire record annexed to the Petition.

3 The record indicates that, the Petitioner-Original Plaintiff has filed the aforestated Suit for eviction of the Respondents, on the ground of

bonafide requirement and other related grounds. That, the daughter of the Petitioner was her Constituted Attorney and her examination-in-chief was recorded on 12th January, 1989 and on 28th February, 1989 in the aforestated Suit. The Suit was thereafter, adjourned from time to time for the reasons mentioned in the Roznama of the said case.

4 That, on 26th June, 1998, the Petitioner and/or her Advocate did not remain present and therefore, the Trial Court dismissed the Suit for want of prosecution at 11.15 a.m. Learned Judge of the Trial Court has observed in its Order dated 26th June, 1998 that, the Plaintiff and her Advocate are absent. Defendant No.2 and his Advocate absent. Last evidence of Plaintiff was recorded on 28th February, 1989. Therefore, for want of prosecution, the Suit is dismissed at 11.15 a.m..

5 The record further indicates that, the Advocate for the Plaintiff immediately at about 1.00 p.m. filed an Application for restoration of the said Suit. Learned Judge of the Trial Court, thereafter passed an Order on the said Application recording that, *'Heard Advocate for Plaintiff at 1.25 p.m., put up with Suit paper at 3.00 p.m. for orders'*.

At 3.00 p.m. the learned Judge of the Trial Court, rejected the said Application by an elaborate Order.

6 Perusal of the impugned Orders would indicate that, what was weighed in the mind of the learned Trial Judge is that, the Suit is pending since 1978 and after the evidence was recorded on the aforestated two

dates, there was no progress in the Suit and therefore, the Plaintiff is trying to procrastinate the said Suit without any reasonable excuse.

7 The chronology of events mentioned in the above paragraphs are the admitted facts on record.

As noted earlier, after the first Order was passed at 11.15 a.m., the Petitioner filed an Application for restoration of Suit at 1.00 p.m.. The Trial Court heard learned Advocate for the Petitioner-Plaintiff at 1.25 p.m. and passed the impugned Order at 3.00 p.m.. In paragraph No. 3 of the Application filed by the Petitioner for restoration of the Suit, it has been clearly mentioned that, the Plaintiff left her house on that day at 9.00 a.m. to lead evidence, against medical advise but during her travel to the Court, her health deteriorated further and she was compelled to return to her house. That, her Advocate had accompanied her.

It is thus clear that, on the date of dismissal of the Suit, the learned Advocate for the Petitioners could not attend the Court at 11.00 a.m. for the aforestated reason. The record further clearly indicates that, the learned Advocate for the Petitioners subsequently appeared before the Court at about 1.00 p.m. and filed an Application for restoration of the Suit.

8 Thus, on 26th June, 1998, the Advocate for the Petitioners was diligent enough in filing an Application for restoration of the said Suit and therefore, the findings recorded by the Trial Court regarding delay in conducting the said Suit were not necessary for deciding the Application for

restoration of the said Suit.

9 In view of the above, this Court is of the considered view that, the Trial Court has committed an error in not allowing the said Application filed by the Advocate for the Petitioners for restoration of the Suit.

In view thereof, impugned Orders dated 26th June, 1998 passed at 11.15 a.m. dismissing the Suit of the Petitioners and of 3.00 p.m. thereby, rejecting Application for restoration of the Suit, are quashed and set aside.

R.A.E. Suit No. 2571 of 1978 is restored to the file of the Trial Court.

All the contentions of both the parties are expressly kept open.

10 As the Suit is of the year 1978, the Trial Court is directed to expedite the hearing of the said Suit and to make an endeavour to conclude the hearing of the said Suit within a period of one year from today.

Rule is accordingly made absolute.

Writ Petition is allowed in the aforesaid terms.

Sanjiv S.
Mashalkar

Digitally signed
by Sanjiv S.
Mashalkar
Date: 2020.01.27
18:04:19 +0530

(A.S. GADKARI, J.)