

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

34 WRIT PETITION NO.1150 OF 2019

NAMDEO BABURAO GAIKAR
VERSUS
2-MARUTI BALA GAIKAR DEAD THROUGH LRS
RAMCHANDRA MARUTI GAIKAR AND ORS

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Advocate for Petitioner : Mr. Shinde S. K.
Advocate for Respondent Nos.3 to 5, 6A to 6D, 7 & 9 : Mr. A.
N. Nagargoje.

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CORAM : V. K. JADHAV, J.
DATE : 01.02.2021

PER COURT :-

1. Heard both the sides at length.
2. The petitioner who is at present 92 years of age preferred the suit bearing Regular Civil Suit No.49 of 1986 for setting aside the decree passed in Regular Civil Suit No.47 of 1958. During pendency of the suit, on one date i.e. 27.11.1997, the petitioner remained absent before the Trial Court due to his ill health and thus the Trial Court has dismissed the suit in default. The petitioner though filed an application for restoration of the suit and also examined himself and the concerned Medical Officer, who has given the

certificate about his ill health on the given date, however, by order dated 30.01.2009, below Exh.87 in Inquiry Application No.1 of 1998 rejected the said application. Being aggrieved by the same, the petitioner has approached the District Court by filing Regular Civil Appeal No.26 of 2009 and after a gap of almost nine years, the learned District Judge, Sangamner had dismissed the Regular Civil Appeal No.26 of 2009 mainly on the ground that the appeal is not maintainable.

3. Though the learned counsel for the respondents has vehemently made submissions by referring the provisions of Order IX Rule 8 of the Civil Procedure Code, however, considering the age of the petitioner, so also his appeal and application seeking restoration remained pending for a long period, I am inclined to allow this writ petition. It is to be observed here that the learned District Judge could have converted the said appeal into the appeal against order in the interest of justice. However, after a gap of 9 / 10 years, the learned District Judge has simply concluded that the appeal is not maintainable and accordingly confirmed the order passed by the Trial Court. Though the learned counsel for the respondents / defendants has strongly raised the objection,

however, I am inclined to allow this writ petition by imposing certain costs.

4. Thus, considering the peculiar facts of the case, it would be just and appropriate that the petitioner shall deposit the costs of Rs.2,000/- (Rupees Two Thousand only) to be paid to the respondents / defendants, before the Trial Court, within a period of two weeks from the date of this order. Hence, following order :

ORDER

- (i) Writ Petition is hereby allowed in terms of prayer clause “B” subject to the costs of Rs.2,000/- (Rupees Two Thousand only) to be paid by the petitioner to the respondents / original defendants, before the Trial Court, within a period of two weeks from the date of this order.
- (ii) Writ Petition is accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-