

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**NAGPUR BENCH, NAGPUR.****WRIT PETITION NO. 456 OF 2021**

Mahmudabegum Wd/o Yusuf Khan (died) through LRs, Shahnaz w/o Syyed Kesar Ali and others Vs. Gulabchand s/o Gaurishankar Gupta through LRs, Purushottam s/o Gulabchand Gupta and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri S.A Malani, Advocate for petitioners.

CORAM : V.M. DESHPANDE, J.

DATE : 3rd FEBRUARY, 2021.

Heard Shri S.A. Malani, learned counsel for the petitioners in extenso.

(2) By this writ petition the petitioners are challenging the following orders:

(i) Order dated 14.01.2019 passed by the learned Joint Civil Judge Senior Division, Nagpur below Exhibit -1 of Miscellaneous Judicial Case No.83 of 2014.

(ii) Order dated 28.02.2019 passed by the learned Joint Civil Judge Senior Division, Nagpur below below Exhibit -21 of Miscellaneous Judicial Case No.83 of 2014.

(iii) Order dated 16.09.2019 passed by the learned 18th Joint Civil Judge Senior Division, Nagpur below Exhibit -25 of Miscellaneous Judicial Case No.83 of 2014.

(3) The petitioners are the original plaintiffs. In the year 1998 they filed a suit i.e. Regular Civil Suit No.1740 of 1988 for accounts, redemption of mortgage or in the alternative for specific performance of contract. The said suit was dismissed in default, therefore, they filed an application for restoration of said suit, which was dismissed in default on 31.10.2013. On 17.06.2015, the learned Judge passed order on Exhibit -1 that applicants and their counsel are absent, the matter is pending without progress and applicants were directed to appear and to take steps otherwise on next date necessary orders will be passed.

(4) From Annexure-2, page 29-A of this writ petition, it appears that on 14.01.2019 learned Civil Judge Senior Division passed order observing that the applicant/petitioner and his counsel were absent and they failed to take any further steps against non-applicant nos.3,5 and 7 or sought time to that effect. Therefore, proceedings were dismissed against non-applicant nos.3,5 and 7. The learned Judge also observed that non-applicant nos.2 and 14 failed to file say or sought time to that effect therefore the matter was directed to proceed further without their say.

(5) After this order dated 14.01.2019 was passed, the applicant/petitioner filed an application (Exhibit -21) for setting aside the order dated 14.01.2019. The said application was rejected vide order dated 28.02.2019 by observing that application (Exhibit -17) dated 02.03.2017

was rejected by the Court. Since then no steps were taken by the plaintiffs/applicants. It was found that the applicants did not attend the matter for a single time. Thereafter, the Court, after reading the pleadings in Exhibit- 21, found that there is no ground for setting aside the order of dismissal and for not taking steps against the defendant nos.3,5 and 7 and therefore application below Exhibit-21 was rejected.

(6) Thereafter, the applicant/petitioner filed another application (Exhibit – 25) for review of order dated 28.02.2019. It was filed on 20.04.2019 i.e. beyond 30 days. The application was replied by the non-applicant no.1 therein and it was pointed out to the Court that the miscellaneous judicial case for restoration of Regular Civil Suit No.1740 of 1988 is a third application. It was pointed out that the suit was dismissed in default on 20.08.1993, thereafter the applicant filed an application for setting aside the order of dismissal in default. The said application was allowed and the suit was restored. In the reply, it was pointed out that the plaintiffs did not adduce evidence therefore on second occasion it was dismissed in default on 15.10.2001. Again, an application for setting aside the order of dismissal in default was moved and the application was allowed and suit was restored. It was further pointed out that the said suit was again dismissed in default on 29.09.2009 and again suit was restored. In the reply, it was also pointed out that this Court in Writ Petition No.5797 of 2012 on 03.05.2013 expedited the suit. Despite that the

applicant protracted the trial and therefore ultimately the suit was dismissed on 31.10.2013 against which Miscellaneous Judicial Case No.83 of 2014 was filed.

(7) The learned Judge considering the record found that no steps were taken by the applicants/petitioners in spite of the opportunities given to them and therefore rejected the application for review also.

(8) It is the submission of learned counsel for the petitioners that the plaintiff who was attending the litigation being a heart patient was hospitalized and therefore could not remain present. Though this submission is made, nothing is brought on record to substantiate the said submission. Further, there is no explanation whatsoever as to why the Advocate has remained absent. The record shows that the petitioners are in habit of not attending the suit/proceedings. It is found that in spite of opportunities being given, no steps were taken by the petitioners. Resultantly no exception can be taken to any of the orders passed by the Court below. The writ petition is therefore dismissed. No order as to costs.

JUDGE

Wagh