

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

WRIT PETITION (WP) NO.6049 OF 2017

[Satyanarayan Hukumichand Shrawagi through legal heirs and Ors.
..**Vrs..** Akot Nagar Palika Akot, through its Chief Officer, Akola]

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

Court's or Judge's

Shri. R. D. Karode, Advocate for the Petitioners
Shri. A. R. Deshpande, Advocate for the Respondent.

CORAM : **N. B. SURYAWANSHI, J.**
DATE : **24th AUGUST, 2021.**

Heard.

2. The Petitioner Nos.2 and 3 filed Regular Civil Suit No.74 of 2000 against the Respondent/Defendant seeking declaration and permanent injunction that they should not be evicted without following due procedure. The suit was dismissed by the Trial Court in default on account of non-appearance of the Petitioners/Plaintiffs and their Advocate on 01.02.2012 (Annexure-D).

3. On 14.02.2012, an application (Annexure-E) was filed by the Petitioners/Plaintiffs seeking restoration of the suit on the ground that the Plaintiff No.2 filed her affidavit in lieu of evidence in the year 2006. However, the matter could not proceed. The Plaintiffs remained present in the Court regularly.

However, on account of old age and an ailment, the Plaintiff No.2 could not remain present for cross-examination on 01.02.2012. The learned Advocate for the Plaintiffs also was out of station and the suit was dismissed in default. It was therefore prayed that the dismissal order be cancelled and the suit be restored.

4. The said application was opposed by the Respondent/Defendant. By the impugned order dated 01.02.2012, the Trial Court rejected the restoration application on the ground that the costs of Rs.250/- and Rs.100/- imposed on the Plaintiffs vide Exh-104 and Exh-105, were not paid by the Plaintiffs. The Trial Court further observed that conduct of the plaintiffs shows that they have lost interest in the suit, since the Plaintiffs are neither paying the cost nor proceeding with the evidence. When the application was called out for hearing, the Plaintiffs and their Advocate were absent. The Trial Court therefore dismissed the restoration application holding that "though medical certificate is produced by the Plaintiff, the same is not proved." There were other Plaintiffs apart from the Plaintiff No.2 on record, who could have appeared in the suit on the date of passing

of the dismissal order in the suit, neither the Plaintiffs nor their Advocate were present. The Plaintiffs have failed to show the sufficient cause for setting aside the dismissal order. Hence, the Trial Court rejected the application.

5. Being aggrieved, the Plaintiffs unsuccessfully filed Misc. Civil Application No.27 of 2016. Both these orders are impugned in the present petition.

6. Heard the learned Advocate for the Petitioners and the learned Advocate for the Respondent.

7. The learned Advocate for the Petitioners submitted that the impugned orders are unsustainable. Fair opportunity of hearing is denied to the Petitioners.

8. The learned Advocate for the Respondent strenuously supported both the impugned orders and pointed out that it was because of the constant absence of the Plaintiffs, the Trial Court was justified in dismissing the suit in default and also the Trial Court was right in dismissing the application for restoration as no sufficient cause was made out by

the Petitioners. He therefore submitted that there is no substance in the writ petition and the same be dismissed.

9. The suit is filed in the year 2006 and since 07.09.2009, the matter was pending for recording of evidence of the Plaintiffs. On some dates of hearing, the Plaintiffs remained absent. The Plaintiffs and their Advocate were absent on the date on which, the suit was dismissed in default. The ground of ailment is raised by the Plaintiffs. Taking into consideration the facts of the present case and the reliefs claimed by the Plaintiffs in the civil suit, it is desirable that the suit be decided on merits and the Plaintiffs need to be given an opportunity to contest the matter on merits. Hence, the writ petition is **allowed**. The impugned order passed by the learned Civil Judge Junior Division, Akot below-26 in Mis. Judicial Case No.13 of 2012 (Annexure-F) and the order passed by the District Court, Akot in Misc. Civil Application No.27 of 2016 (Annexure-H) are hereby quashed and set aside subject to the Petitioners/Plaintiffs paying cost of Rs.10,000/- to the Respondent.

10. Taking into consideration the facts that since the year 2009, the matter was pending for evidence. The parties are directed to appear before the Trial Court on 14.09.2021 and the Trial Court shall decide the suit within six months from today.

11. With these directions, writ petition is disposed of.

(N. B. SURYAWANSHI, J.)

TAMBE