

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

WRIT PETITION NO.6058 OF 2021

CHAYA HANUMANT PAWAR
-VERSUS-
ASHWINI HANUMANT PAWAR

...
Advocate for the Petitioner : Shri Nagargoje Ankush N.
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CORAM: SMT. BHARATI H. DANGRE, J.

DATE :- 19th January, 2022

Per Court:

1. Heard the learned counsel for the petitioner. The petitioner is aggrieved by the order passed in Misc. Civil Application No.61/2020 in RCS No.359/2016 thereby, rejecting the application filed by the petitioner/ plaintiff for seeking restoration of the suit, which is dismissed in default on 05.02.2020.

2. On perusal of the proceedings to which the reference is made in the writ petition, it can be discerned that the petitioner filed RCS No.359/2016 against the defendant claiming partition and separate possession in respect of the agricultural land described in the plaint. The plaintiff pleaded that the suit properties are ancestral properties and the petitioner and the respondent are having equal share, the respondent being her daughter. The respondent filed the Written Statement and resisted the claim set out in the plaint and also raised several defences

opposing the prayer for partition and separate possession. The application filed by the plaintiff seeking temporary injunction vide exhibit-5 was allowed on 09.02.2017 and the defendant was restrained from alienating the suit property till the final disposal of the suit.

3. On 05.02.2020, the learned Joint Civil Judge, Junior Division, Kaij, District Beed, passed the following order :-

“Order Below Exh.1

Perusal of record shows that, the matter was pending for the evidence of the plaintiff since 24.07.2018. As the plaintiff has failed to lead the evidence till 02.12.2019, on same day evidence of the plaintiff was closed. Since the suit is for partition, it was kept for the evidence of the defendant. Till today, the defendant also has not taken the effective steps to proceed with the suit. Hence, considering all the facts, following order is passed.

Order

Suit is dismissed in default.”

4. Upon dismissal of the proceedings, the petitioner/ plaintiff filed Misc. Civil Application No.61/2020 under Order 9 Rule 4 of the Code of Civil Procedure on 24.02.2020 and prayed for restoration of the suit. She also led oral evidence in support of her application and the submission advanced is that despite the cause/ reason justified for restoration of the suit, the learned Judge has dismissed the application and refused to restore the suit to its file.

5. On perusal of the proceedings, it can be seen that the

petitioner/ plaintiff herself was not diligent in prosecuting the suit as the matter was pending for evidence from 24.07.2018, but since she failed to lead evidence, her evidence was refused to be taken on record and the order to that effect came to be passed on 02.12.2019. On 05.02.2020, when the matter was listed, the plaintiff did not even bother to remain present though the matter was placed for evidence of the defendant. Even the defendant did not bother to mark her presence. Reason is obvious. Since the injunction is operating in favour of the plaintiff since 09.02.2017 and she was enjoying the fruits of the restraint order against the defendant, she was reckless and not diligent in prosecuting the suit and even did not bother to enter the witness box.

6. When the suit is dismissed on 05.02.2020 and it's restoration is sought for by bringing application under Order 9 Rule 4 on 24.02.2020, the application is as vague as it could be and it is stated that on 05.02.2020 some of her close relative had expired and she had to be out of station for attending funereal rites and she could not establish contact with her advocate and therefore, she could not remain present in the court. Resultantly, the order came to be passed on 05.02.2020 since even her advocate did not mark his presence. In paragraph 3 of the application, the reason stated is that the petitioner, on account of some dispute in the house, had proceeded out of the village to fetch a source of livelihood and as such, she could not remain present. In paragraph 4 of the application,

another new reason surfaced being that she is poor labourer and therefore, she has to remain outside the village for earning her livelihood and therefore, she could not contact her lawyer.

7. In the wake of the multiple reasons coming forth, the learned Judge has analyzed the application in the wake of the evidence led by the plaintiff, who sought restoration of the suit. Recording that no convincing reasons are coming forth, justifying invocation of the power under Order 9 Rule 4 and no sufficient cause is shown for restoration of the suit, which was dismissed in default, the application filed by the petitioner has been rejected.

8. I do not find any lacuna, legal or factual, to set aside the impugned order since the petitioner/ plaintiff from very inception had adopted lackadaisical approach in prosecuting the suit filed by her and in her absence, the suit could not have been taken to its logical end and particularly when the injunction is operating in her favour and against the defendant. In her absence, the suit has been dismissed in default and in the wake of the fact that no sufficient cause has been shown for its restoration, the learned Judge has rightly rejected the same. Upholding the impugned order, the Writ Petition deserves dismissal and is, accordingly, dismissed.