

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

WRIT PETITION NO. 7070 OF 2019

Jitendra Govindrao Patil

...Petitioner

Versus

Kashinath Puna Sarwade & Ors.

...Respondents

.....

Mr. S. P. Brahme h/f Mr. Bipinchandra K. Patil, Advocate for the
petitioner

Mr. K. B. Jadhavar, AGP for respondent/State

Mr. S. P. Salgar h/f Mr. N. V. Gaware, Advocate for the respondent
nos. 1 to 4

.....

AND

WRIT PETITION NO. 7071 OF 2019

Rajaram s/o Shankar Patil / Chandile

...Petitioner

Versus

Kashinath Puna Sarwade & Ors.

...Respondents

.....

Mr. S. P. Brahme h/f Mr. Bipinchandra K. Patil, Advocate for the
petitioner

Mr. K. B. Jadhavar, AGP for respondent/State

Mr. S. P. Salgar h/f Mr. N. V. Gaware, Advocate for the respondent
nos. 1 to 4

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WRIT PETITION NO. 7082 OF 2019

Sunita wd/o Ravindra Patil & Ors.

...Petitioners

Versus

Kashinath Puna Sarwade & Ors.

...Respondents

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Mr. S. P. Brahme h/f Mr. Bipinchandra K. Patil, Advocate for the petitioner

Mr. K. B. Jadhavar, AGP for respondent/State

Mr. S. P. Salgar h/f Mr. N. V. Gaware, Advocate for the respondent nos. 1 to 4

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CORAM : BHARATI H. DANGRE, J.

DATE : JANUARY 17TH, 2022

PER COURT : -

1. The petitioners in all these petitions are aggrieved by the dismissal of their Civil Misc. Applications seeking restoration of the original suit, which was dismissed in default and since there was a refusal to restore the suit, the respective plaintiffs/petitioners have instituted three distinct writ petitions. The petitioners claim to be purchasers of the piece of land by registered sale deed executed in the year 1992 and 1995 and the claim in the petitions is that they were in peaceful possession of the suit property and even their names were mutated in the record of rights, which was never subjected to challenge. The respondents approached the Collector by filing an application purportedly instituted under Section 9(1) of the Maharashtra Inferior Village Watans Abolition Act and on 05.01.2004, the Collector issued directions to the plaintiff/petitioner to handover the possession of the suit land to the applicant

(respondent herein). The contention *qua* the said order is to the effect that the said order was passed without adhering to the principles of natural justice and no opportunity was afforded to the plaintiffs to defend the said action. This constrained the petitioners/ plaintiffs to approach the Civil Judge Senior Division, Jalgaon by filing distinct Regular Civil Suits. The defendants/respondents appeared in the suit and filed application under Section 9A of the Civil Procedure Code, which was allowed by the learned Civil Judge Senior Division by order dated 03.08.2010 and the suit was held to be not maintainable on the point of jurisdiction. This constrained the petitioners to approach the District Judge, Jalgaon and on 06.04.2016, the appeal was registered as Misc. Civil Appeal No. 26/2016 and the same came to be allowed on the very same day, by quashing and setting aside the order passed by Civil Judge Senior Division holding that he had the jurisdiction to try the suit and by order dated 06.04.2016, the proceedings came to be remanded to the trial Court to decide the distinct suits expeditiously and the parties were also directed to appear before the trial Court by stipulating a particular date. These proceedings were dismissed for want of prosecution by the Civil Judge Senior Division, Jalgaon on 11.08.2017 by recording as under : -

“Order below Exh. 01.
(passed on 11.08.2017)

Plaintiff and his advocate are repeatedly absent since 25.04.2016 till today. Defendants and their advocate are also absent. The Hon’ble Principal District Judge, Jalgaon has passed the order on 06.04.2016 in MCA No. 26/2016 and directed to parties shall appeared before the Trial Court on 25.04.2016. Since then, no party and their advocate are present to proceed with the case. Therefore, this Court come to the conclusion that plaintiff is not interested to proceed with the case. Since the matter is 10 years old, sufficient opportunity given to the plaintiff since 25.04.2016 to take necessary steps in the proceedings. In such circumstances suit is dismissed for want of prosecution.

(Dictated and pronounced in the open Court)

Dt. 11.08.2017

Sd/-
Civil Judge Sr. Division, Jalgaon.”

. This constrained the petitioners/original plaintiffs to seek restoration of the suit by filing an application under Order 9 Rule 4 of the CPC and the delay in not bringing the application within a period of 30 days was sought to be explained in para no. 9 by stating that the certified copy of the order was applied for and on it’s receipt, the application for restoration filed is within the limitation.

2. The application came to be rejected by distinct orders passed on the same date i.e. on 24.04.2019 and by recording that the case of the plaintiffs as stated in para no. 5 of the application that their lawyer had withdrawn from the proceedings without intimating them and without following the process set out under the civil

manual and in particular para 660, where it is necessary for the Counsel to issue notice to the client before he withdraws from the proceedings. The learned Judge recorded that the plaintiff has failed to adduce any evidence on record to prove the said factum. It is recorded that the petitioner ought to have proved the said fact by adducing oral or documentary evidence but failed to do so and in the circumstances, the petitioners had no knowledge about withdrawing of the vakalatnama by his Counsel and, therefore, he could not have put his appearance on the given date was not found to be a probable reason which would have justified the restoration. Recording that the parties were directed to remain present before the trial Court on a particular date but there was a failure on the part of the plaintiffs to adhere to the said directions, and by recording that no sufficient cause was shown for the non-appearance on 11.08.2017 and on the earlier date, the restoration was refused.

3. On hearing the learned Counsel Mr. S. P. Brahme and the learned Counsel for respondent, who has raised an objection about the application for restoration filed under Order 9 Rule 4 of the Civil Procedure Code not within the period of 30 days, though pressed into service, it is just referred to be rejected because perusal of the impugned order reveal that this point was not raised by the

respondent when the Misc. Civil Applications were argued nor did the Court adjudicate or ponder over the said point. In the wake of the aforesaid, it is not permissible to raise this point at the stage when the petitioners have filed the writ petitions.

4. On perusal of the impugned orders, it can be discerned that it is not the case where the plaintiffs were not diligent in prosecuting their remedy and the series of events could reveal that being aggrieved by the decision of the Collector, the plaintiffs had promptly instituted an action by approaching the Civil Court and even contested the application under Section 9A CPC. However, in the reasons which have been cited in the application being that the learned Counsel representing the plaintiffs had withdrawn his vakalatnama but this was done without intimating the plaintiffs, which would have enabled them to engage the services of another counsel, as stated in the paragraph no. 5 of the Misc. Civil Application, since the settled position of law being a client cannot be made to suffer for the mistakes or the lapses of the lawyer, I am inclined to grant indulgence in favour of the petitioners/plaintiffs by setting aside the impugned order. However, taken note of the fact that the impugned orders are passed on 24.04.2019, and much period has lapsed, it is necessary that the plaintiffs shall compensate

the defendants by payment of costs of Rs. 10,000/- (Rupees Ten Thousand) in each case, which shall be paid within a period of four weeks of the passing of the order with a receipt being produced to the trial Court.

5. Subject to the payment of costs to the defendants, the impugned order dated 24.04.2019 passed by the Jt. Civil Judge (Senior Division), Jalgaon is quashed and set aside. The suits are directed to be restored to the file of learned Civil Judge, who shall make every endeavour to dispose off the proceeding in the suits within a period of six months from today. Needless to state that both the parties shall render their cooperation to the learned Judge in disposing of the proceedings.

6. The petitions are accordingly disposed off.

[BHARATI H. DANGRE]
JUDGE