

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

WRIT PETITION NO.11214 OF 2022

**VIKRAM MAHADU RAJPUT
VERSUS
BHAVSING MAHADU RAJPUT**

...
Mr. P. C. Mayure, Advocate for the Petitioner.
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CORAM : SANDEEP V. MARNE, J.

DATED : 11th NOVEMBER, 2022.

PER COURT:-

1. The petitioner has filed present petition challenging the order dated 28.06.2022 passed by the Joint Civil Judge, Junior Division, Dhule in Miscellaneous Application No.270/2022, whereby the order dismissing the suit in default has been recalled subject to payment of costs of Rs.4000/-. The petitioner is also aggrieved by the order dated 15.07.2022, whereby the Trial Court has permitted the respondent to deposit the costs beyond the time limit specified in the earlier order dated 28.06.2022.

2. The suit was dismissed in default by order dated 24.09.2021 after which the respondent filed application for restoration of the suit on 04.08.2022. The application was opposed by the petitioner/defendant by filing his reply. After hearing both the sides, the Trial Court has passed a detailed order dated 28.06.2022 restoring the

suit of the respondent/plaintiff subject to payment of costs of Rs.4000/- to the petitioner within a period of 7 days.

3. I have gone through the reasoning given by the Trial Court while restoring the suit and I do not find any error being committed by the Trial Court.

4. The learned counsel for the petitioner submits that, the respondent failed to deposit the costs awarded by the Trial Court within a period of 7 days from 28.06.2022. He would submit that, on earlier occasion also cost of Rs.200/- was imposed on the respondent on 22.09.2021 and the respondent defaulted in payment of that costs as well. The learned counsel would therefore submit that the respondent has been extremely casual in prosecuting the suit and in these circumstances the Trial Court ought not to have granted extension to the respondents for depositing the costs of Rs.4000/-. By order dated 15.07.2022, the Trial Court has permitted the respondent/plaintiff to deposit costs of Rs.4000/- and the same have indeed been deposited.

5. In my opinion, the Trial Court enjoys wide discretion in the matter of restoration of the suit which is dismissed in default on appropriate grounds. This Court in exercise of jurisdiction under Article 226/227 of the Constitution of India

would not sit in Appeal over such discretionary power exercised by the Trial Court and reverse its order, which would result in dismissal of the suit, rather than its consideration on merits. Equally, the Trial Court possesses wide discretion to grant extension of time for deposit of costs. The costs were required to be deposited within 7 days of 28.06.2022 and the respondent/plaintiff did approach the Court with an application dated 05.07.2022 seeking permission to deposit the costs in the Court. In such circumstance, I do not find any error being committed by the Trial Court in passing an order on 15.07.2022 permitting deposit of costs in the Court.

6. The petition is devoid of merits and the same is dismissed without any orders as to cost.

(SANDEEP V. MARNE)
JUDGE