

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

910 CIVIL REVISION APPLICATION NO.134 OF 2022

JAMA MASJID JALNA THR ITS MUTAWALI GULAM MAHEBOOB
ABDUL KHALED

VERSUS

SAMINDRABAI SHANKAR KALE ALIAS KAMBLE THR GPA
ASHOK SHANKAR KAMBLE ALIAS KALE

...

Advocate for Applicant: Mr. Tabrezuddin Quadar
h/f. Mr. Mujtaba Gulam Mustafa

...

CORAM: ARUN R. PEDNEKER, J.

DATE: 16th NOVEMBER, 2022

PER COURT:

1. The learned counsel for the applicant submits that the suit was dismissed for default and then it has been restored. The learned counsel submits that the application for restoration was filed under Order 9 Rule 4 of CPC, wherein it should be under Order 9 Rule 9. The learned counsel submits that Covid pandemic was the cause given for non appearance on the given date. He further submits that there was no other cause shown for restoration.

2. The title given to the application is not the relevant factor and the trial court has allowed the application for restoration under the correct provision of the Code of Civil procedure and restored the suit. I do not see any illegality being committed. More so, when the rights of the plaintiff would be defeated at the preliminary stage, he should be given appropriate opportunity to make out his case.

3. For the above reasons, I see no reasons to interfere and accordingly the civil revision application is dismissed.

[ARUN R. PEDNEKER, J.]

marathe