

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY****CIVIL APPELLATE JURISDICTION****WRIT PETITION NO.11142 OF 2019**

Savita Jagdish Patil

.. Petitioner

Versus

Vinayak Manik Gaikwad and Ors.

.. Respondents

.....

- Mr. C.D.Mali for Petitioner
- Mr. Siddharth Shitole i/by Mr. Sarthak S. Diwan for Respondent No.3

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**CORAM : MILIND N. JADHAV, J.****DATE : DECEMBER 14, 2022.****P.C.:**

1. Heard Mr. Mali, learned Advocate for Petitioner.
2. The orders impugned in the present Petition are dated 10.01.2019 and 30.07.2019.
3. Perusal of the order dated 10.01.2019 indicates that in view of the absence of the applicant and the Advocate for a period of three months from 30.08.2018 to 10.01.2019, the learned Trial Court has dismissed the Petition of the Petitioner against Respondent No.2. Thereafter the Petitioner preferred an application seeking restoration of the Petition on 05.07.2019 albeit after a delay of almost 5 months.
4. Learned Trial Court passed the order dismissing the said application by observing that the application is barred by limitation and reason mentioned is not proper. Perusal of the application dated

05.07.2019 (Page 50 of the Petition) clearly reveals the reasons for seeking restoration which are adequately mentioned. I am convinced with the said reasons. It appears that the learned Trial Court on the noting side of the application has also stated that no say has been filed by the Respondents therein. As such there was no opposition to the application. In that view of the matter the impugned order dated 30.07.2019 is not sustainable. Both the impugned orders stand quashed and set aside.

5. Writ Petition stands allowed in terms of prayer clause (a) which reads thus:

*“(a) This Hon’ble Court may be please to issue the writ of certiorari or any other right and or direction and call the records and proceeding and after verifying the legality and validity of the impugned order dated 10.01.2019 and order dated 30.07.2019 be quash and set-aside.”*

[ MILIND N. JADHAV, J. ]