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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION 8273 OF 2022

Pramila Sadashiv Jagtap

... Petitioner.

Versus

Shamrao Rangrao Deshmukh (deceased)
through LRs. :-

... Respondents.

a. Nirmala Shamrao Deshmukh & Ors.

Mr. V. V. Salunke, Advocate for the Petitioner.

Mr. Maheshwar A. Parab, Advocate a/w. Nitesh Gupta i/by
Pravartak Pathak for Respondents 6 & 7.

CORAM : ROHIT B. DEO, J.

DATE : JULY 12, 2022

P.C. :-

1. Petitioner is the original Plaintiff in partition suit, whose application seeking to bring on record legal heirs of deceased - Defendant 1, is rejected.

2. I have set aside the order of rejection of the application preferred by the Plaintiff for bringing on record legal heirs of Defendant 1, by a separate order passed in Writ Petition 6926 of 2018.

3. It appears that during the pendency of the Writ Petition 6026 of 2018, Regular Civil Suit 36 of 2012 was dismissed in default vide order dated 05.10.2017. The Plaintiff moved an application immediately on the same day, seeking restoration of the suit on the ground that Writ Petition is preferred in the High Court, challenging the earlier orders. This application, seeking restoration of the suit, is dismissed vide order dated 05.10.2017.

4. The learned trial Judge observed in para 4 thus :

“4. Totality of circumstances and the conduct of plaintiff and advocate shows that any how she want to kill the time without any bonafide hearing. At no date she made inform the court as to intention of preparing writ petition before High Court. Even no papers produced today showing pending of any such writ petition or any order passed by the High Court. Even no evidence is attached with the application. Thus, the application is not tenable and filed only with the view to keep pending the proceeding without any effective hearing same thus amounts to a misuse of process of law According following order is passed.

ORDER

Application is rejected with costs of Rs. 500/- to be paid to T.L.S.A., Yeola.”

5. I am satisfied that the learned trial court Judge committed serious error in refusing to restore the suit, although such application was preferred immediately. It was futile for the Plaintiff to proceed with the suit without obtaining orders from the High Court since the Plaintiff was not permitted to bring on record the legal heirs of deceased -Defendant 1, who are necessary parties; considering that the suit is for partition. This aspect, the learned trial Judge clearly lost sight of.

5. The order impugned is set aside.

6. The Application Exhibit 77, preferred by the Plaintiff for restoration of the Regular Civil Suit, is allowed.

7. Petition is allowed in the aforestated terms.

8. The learned trial Judge shall expedite the hearing of the suit.

(ROHIT B. DEO, J.)

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