

Anand

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

**WRIT PETITION 6391 OF 2012
WITH
INTERIM APPLICATION 395 OF 2020
IN
WRIT PETITION 6391 OF 2012
WITH
INTERIM APPLICATION 396 OF 2020
IN
WRIT PETITION 6391 OF 2012
WITH
INTERIM APPLICATION 397 OF 2020
IN
WRIT PETITION 6391 OF 2012
WITH
INTERIM APPLICATION 398 OF 2020
IN
WRIT PETITION 6391 OF 2012
WITH
INTERIM APPLICATION 400 OF 2020
IN
WRIT PETITION 6391 OF 2012**

Appasaheb Suryappa Dhangar @
Deshinge & ors.

.Petitioners/
Applicants

Vs.

Dattatraya Suryappa Dhangar @
Deshinge & ors.

.Respondents

Mr. Swaroop Karade a/w Mr. Surel S. Shah, Advocate, for the
Petitioners/Applicants

Mr. Omkar Nagwekar i/b. Mr. P. R. Arjunwadkar, Advocate,
for the Respondent 4A

Mr. Rui Danawala i/b. Mr. Umesh Mankapure, Advocate, for
the Respondent 7

CORAM : ROHIT B. DEO, J.

DATE : 28.07.2022

P. C.

. This Petition is pending since 2012.

2. The challenge is to the Judgment dated 09.01.2012, whereby the learned District Judge-1, Jaysingpur (learned Appellate Judge) dismissed Miscellaneous Civil Appeal 12 of 2009 which was preferred challenging the Order dated 09.02.2009 rendered by the learned trial Judge in Miscellaneous Civil Application 11 of 1996, thereby rejecting the Application under O. IX, Rule 9 of the Code of Civil Procedure, 1908 (for short 'CPC') seeking restoration of R.C.S. 80 of 1993 which was dismissed in default on 11.07.1996.

3. Perusal of the record reveals that the Respondent 7 has expired and the Petitioners have not been able to bring on record the legal heirs. It is common ground that the Respondent 7 is a contesting party. The Petition stands

abated against the Respondent 7. I do not consider it necessary to burden this Court's dockets by keeping the Petition pending.

4. I have, therefore, heard learned counsel for the Petitioners/Applicants and learned counsel for the Respondent, who held the brief for the deceased Respondent 7. Learned counsel for the Respondent 4A, who is also dead, is heard.

5. It is common ground that the suit is dismissed in default on 11.07.1996. Perusal of the record reveals that the Plaintiffs failed to attend the proceedings from 14.10.1993 till the date of dismissal of the suit. Two reasons are given in the restoration Application, which are not accepted by the learned trial Judge, who rejected the restoration Application. The first justification for the failure to attend the proceedings was the illness of the Plaintiff 2 - Appasaheb. Both the Courts have found that there is absolutely no attempt made to explain why the other Plaintiffs, to wit, Plaintiffs 1 and 3 to 5 could not have

attended the proceedings. Both the Courts noted, that it is not even the case of the Plaintiffs that the other Plaintiffs depended on Appasaheb to look after the proceedings. The other reason given is that the Plaintiffs were under the impression that since the Miscellaneous Civil Appeal is pending challenging interlocutory order, the proceedings in the trial Court shall remain under suspension. The Courts have rightly noted that in the absence of any interim order in Miscellaneous Civil Appeal and thereafter, in the Civil Revision Application, there was no reason for the Plaintiffs to labour under the assumption that the proceedings in the trial Court shall not continue.

6. Both the Courts have considered the material on record and have concurrently found that the Plaintiffs are not entitled to restoration of the suit. In exercise of writ jurisdiction. I do not find any reason to interfere with the concurrent findings recorded, in the absence of demonstrable perversity or rationality.

7. The Petition is dismissed.

8. In view of dismissal of the W. P. 6391 of 2012, the Interim Applications 395 to 398 & 400 of 2020 do not survive and the same stand disposed of.

(ROHIT B. DEO, J.)