

S.S.Kilaje

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11551 OF 2019

Shailesh Padmakar Adke

.. Petitioner

Versus

Banabai Shamrao Patil

(Deceased through LHRs.)

.. Respondents

-
- Dr. Uday P. Warunjikar, Advocate for Petitioner
 - Mr. Mahindra Deshmukh, Advocate for Respondent Nos. 2 to 5
-

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 20, 2022.

P.C.:

1. Heard Dr. Warunjikar, learned Advocate for Petitioner.
2. The delay admittedly in the present case is gross. Regular Civil Suit No.138 of 2000 was filed by the Petitioner on 06.05.2000 at the stage of evidence since Petitioner could not adduce evidence it came to be dismissed for want of prosecution on 02.03.2011. An application for restoration was filed on 29.07.2011. However, once again Plaintiff did not remain present for prosecuting the Restoration Application and the said Application came to be dismissed on 18.01.2013. Thereafter, admittedly there is a delay of more than 5 years as recorded in the impugned order dated 03.07.2019. Undoubtedly, the learned Trial Court has rejected the Application and not accepted the reasons for sufficient cause advanced by the

Petitioner.

3. Dr. Warunjikar, learned Advocate for Petitioner has submitted that the suit is filed for seeking declaration of the suit property and therefore an opportunity be given to the Petitioner. He has fairly admitted to the gross delay.

4. **PER CONTRA**, Mr. Deshmukh, learned Advocate for Respondent Nos. 2 to 5 has pointed out the aforesaid orders which clearly show gross neglect on the part of the Petitioner in prosecuting the suit proceedings.

5. However, looking to the facts of the present case Dr. Warunjikar assures the Court that the Plaintiff shall adduce the evidence and this Court can put the Plaintiff to terms.

6. In support of his above submissions he has relied upon the provisions of Order XXII Rule 10 of the Civil Procedure Code, 1908 and the following decision of Hon'ble Supreme Court.

(i) Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy and Ors.¹,

7. I am inclined to allow the Petition subject to the Petitioner paying substantive costs to the Respondent Nos. 2 to 5 who have suffered the delay. Subject to the Petitioner paying costs of Rs.25,000/- i.e. Rs.6,250/- each to Respondent Nos. 2 to 5, Regular Civil Suit No. 138 of 2001 stand restored to the file of the learned Trial

¹ (2013) 12 SCC 649

Court. The cost shall be paid within a period of two weeks from today. Needless to state that orders dated 18.01.2013, 01.03.2011 and 03.07.2019 which are impugned in the present Writ Petition stand quashed and set aside subject to fulfillment of the above condition.

8. Considering that the suit is old, at the joint request of both the learned Advocates, learned Trial Court is requested to complete the hearing of the suit proceeding within a period of 12 months from today.

9. Writ Petition is disposed.

[MILIND N. JADHAV, J.]

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