

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO.290 OF 2022

(Khadi Village Industries Commission (KVIC) thr. its Chief Executive Officer, Mumbai
Vs. Sarva Seva Sangha (All India) Sarvoday Mandal, thr. its Managing Trustee,
Shri T.R.N. Prabhu)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.*

Court's or Judge's orders.

Mr. Anil D. Sonak, Advocate for Petitioner.

CORAM: ROHIT B. DEO, J.

DATE: 18th FEBRUARY, 2022.

The learned trial Judge has by the order impugned restored Special Civil Suit 112/2011 which came to be dismissed in default on 06.07.2017.

2. The plaintiff is a registered trust based in New Delhi and the suit is instituted seeking recovery of arrears of rent.

3. The suit came to be dismissed in default on 06.07.2017 since the plaintiff did not adduce evidence.

4. In support of the submissions in the restoration application, which broadly are to the effect that the Director Mr. T.R.N. Prabhu was required to be on tour and could not be present at the office at Sewagram, and therefore, found it difficult to coordinate with the counsel on record, the plaintiff examined Mr. Prabhu. The defendant did not

adduce any evidence in rebuttal.

5. The learned trial Judge accepted the evidence adduced on behalf of the plaintiff trust and on the basis of the material on record, recorded a finding of fact that sufficient cause is shown for the absence on the relevant date. The learned trial Judge accordingly restored the suit subject to payment of costs of Rs.3000/- (Rupees Three Thousand) to the defendant.

6. The learned counsel for the defendant Mr. Sonak would argue that the witness was not authorized to adduce evidence. The submission is out-rightly rejected. The suggestion in the cross-examination is that the witness has not placed on record the authority letter of the trust authorizing the witness to move the restoration application. In my considered view, no such authority letter was required to be placed on record. In any event, a finding is recorded after appreciation of material on record. The discretion which is exercised is not arbitrary and in writ jurisdiction, I would be loath to interfere.

7. The petition is dismissed.

JUDGE

NSN