

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPEAL FROM ORDER NO. 6 OF 2020

Shri Eknathrao Ganpatrao Khadse

Appellant

Versus

Shri Gulabrao Raghunath Patil

Respondent

Mr. M. K. Goyanka, Advocate for the appellant.

Mr. S. P. Brahme, Advocate for respondent.

CORAM : R. M. JOSHI, J.

DATE : 2nd MAY, 2023.

PER COURT :

1. This appeal from order is filed against order dated 25th November, 2019, passed by Civil Judge Junior Division, Jalgaon, in Regular Civil Suit No. 1/2016 below Exhibit 30 refusing to set aside order of dismissal of suit for non-prosecution and order passed below Exhibit 1 for dismissal of the suit for non-prosecution.

2. Plaintiff has filed suit in the year 2016 for damages on account of alleged defamation by defendant. On 19th October, 2019, application for adjournment was moved wherein direction was given to the plaintiff to remain present before the Court. In spite of the same, plaintiff remained absent and adjournment was sought by

preferring application Exhibit 30. The said application was dismissed by passing order dated 25th November, 2019. Trial Court not only rejected the application but proceeded further in passing order below Exhibit 1 whereby the suit was dismissed for want of prosecution. On the same day, application was moved for setting aside of the said order, however, the same was also declined by the Trial Court.

3. Even without going into the contentions of the rival parties, suffice it to say that when application for setting aside order of dismissal was moved on the very same day, the Trial Court ought to have considered that the plaintiff is desirous of prosecuting his suit before the Court. In such circumstances, it was not proper on the part of the Trial Court to refuse restoration of the suit. Trial Court could have put plaintiff to terms and restored suit. It is settled law that the controversy/lis between the parties be better decided on merit than its dismissal on technicalities. The whole idea behind rejecting application for adjournment was that suit was more than 5 years old. However, the said rejection has resulted into non decision of dispute on merit even after 3 years thereafter.

4. Having regard to the fact that on the same day of dismissal of suit, restoration thereof was sought by plaintiff, the impugned order deserve interference and the suit needs to be restored to its stage at the time of dismissal. However, considering the facts and circumstances of the case, it would be just and proper to impose cost for restoration with further condition. The amount of cost is quantified at Rs.20,000/-, payable to defendant.

5. In the result, impugned orders are set aside. Regular Civil Suit No. 1/2016 stands restored to its stage at time of dismissal thereof. The plaintiff to pay amount of Rs.20,000/- to defendant on or before 19th June, 2023. The suit shall stand restored only in the event cost is so paid. In failure to pay cost as directed, this order shall stand revoked without further reference to this Court and appeal will be treated as dismissed. In case cost is paid, learned Trial Court to entertain the suit.

6. The parties are directed to appear before the Trial Court on 19th June, 2023. As informed to this Court, the stage of the proceeding is for evidence of the plaintiff. Plaintiff to not only file affidavit of evidence on that day but to provide advance copy to

learned counsel for the defendant and to present himself for facing cross examination on that day. If plaintiff fails to remain present, it is open for Trial Court to pass appropriate order as per law. Trial Court is directed to dispose of the suit within a period of six months from 19th June, 2023.

7. Appeal from order stands disposed of in above terms.

8. Pending civil application if any, does not survive and stands disposed of.

(R. M. JOSHI)
Judge

dyb