

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 6826 OF 2023

RADHAKISAN RAMCHANDRA SHINDE DECEASED THROUGH LRS ALKABAI
RADHAKISAN SHINDE AND OTHERS
VERSUS
ROHINI MADHAVRAO DESHMUKH AND OTEHRS

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Advocate for Petitioners : Mr. Shinde Abasaheb D.

Advocate for Respondent Nos. 1 to 4 : Mr. Tambe Rahul A.

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CORAM : SHAILESH P. BRAHME, J.

DATE : 4th DECEMBER 2023.

Per Court :

. Heard Mr. Shinde, learned Counsel for the petitioners and Mr. Tambe learned Counsel for the contesting respondents. Other respondents are formal parties, who are served, but not caused appearance.

2. The petitioners are challenging the order dated 17.02.2023 passed by the learned Civil Judge, Senior Division, Kopargaoon, refusing to restore suit which was dismissed for non-prosecution. The petitioners are the heirs of original sole plaintiff/deceased Radhakisan Ramchandra Shinde, whereas the respondents are the defendants. The suit is filed for mandatory injunction, removal of encroachment and possession. The sole plaintiff died on 31.07.2017 due to cancer. By order dated

17.07.2017, learned trial Judge dismissed the suit for want of evidence. Despite the pursis at Exhibit-73 dated 27.02.2017, no steps were taken by the proposed heirs of the deceased plaintiff.

3. Being aggrieved, on 01.08.2017, Civil M.A. No.73/2017 is filed. It is contested by the respondents by filing Say. The learned Counsel for the petitioners submits that the approach of learned Judge is pedantic and against the principles of natural justice. The deceased plaintiff was suffering from cancer and unable to attend the dates. The petitioners who are the heirs of deceased plaintiff are not aware of the proceeding. The learned Judge has adopted hyper technical approach. The learned Counsel submits that the learned trial Judge took two and half years for passing order under challenge. According to him, impugned order is perverse.

4. The learned Counsel for the respondents supports impugned order. He would submit that the learned Judge has taken possible view. The petitioners have failed to take steps when their lawyer was instructed by them, which is evident from the pursis at Exhibit-73. The petitioners are casual in their approach and do not want to prosecute the matter. He would pray to dismiss the petition.

5. I have considered the rival submissions of the parties. On 17.07.2017, suit was dismissed for want of evidence. Immediately, on 01.08.2017, Civil M.A. No.73/2017 is filed for restoration of the suit. Its trite law that the party should not suffer because of the technicality

of the procedure. It is desirable to hear the parties on the merits. It cannot be overlooked that the learned trial Judge took almost two and half years for deciding application. He should have adopted pragmatic approach by allowing application with reasonable costs. I am of the considered view that the impugned order is against principles of natural justice. The impugned order is unsustainable. Therefore, I pass the following order.

ORDER

- (i) The order dated 17.02.2023 passed by the learned Civil Judge, Senior Division, Kopergaon in Civil MA No.73/2017 is quashed and set aside.
- (ii) The Civil M.A. No.73/2017 stands allowed and Regular Civil Suit No.308/2011 is restored to its original position. The petitioners shall be impleaded as heirs of deceased plaintiff.
- (iii) The learned Civil Judge, Senior Division, Kopergaon shall make an endeavour to decide the suit within a period of eight months from today.
- (iv) The petitioners shall pay costs of Rs.15000/- to the respondents within a period of three weeks from today.
- (v) The writ petition is disposed of.

[SHAILESH P. BRAHME, J.]

Najeb.