

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8047 OF 2020

Somnath Trimbak Balme And Another Petitioners

Versus

Vitthal Gangadhar Balme And Others Respondents

Mr. V.V. Tarde, Advocate for the petitioners.

Mr. N.B. Jadhav, Advocate for respondent Nos. 1 to 3.

.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 2nd AUGUST, 2023

ORDER :

1. Petitioners are aggrieved by the order passed by Civil Judge, Junior Division, Rahuri, in Civil Miscellaneous Application No. 24/2014, thereby rejecting the restoration application filed by the petitioners.

2. Petitioners/original plaintiffs filed suit for permanent injunction, measurement and for fixation of boundaries of the suit property.

3. Defendant Nos. 1 to 3 though appeared in the suit, failed to file written statement. Therefore, no written statement order was passed against them on 22.07.2010. Defendant Nos. 4

to 6, though duly served, failed to appear before the Court. Hence, suit proceeded ex parte against them. By order dated 28.10.2011, passed below Exhibit-7, Taluka Inspector of Land Record, Rahuri, was appointed as Court Commissioner. He submitted report on 04.02.2013 along with measurement map Exhibit-28. Both the parties were called upon to file their say on the said report. Till 27.06.2013, no say was filed by either of the parties. The matter was thereafter posted for evidence. On 07.10.2013, plaintiffs filed application to amend the plaint, which was allowed. Since, plaintiff failed to appear on many dates and no steps were taken to amend the plaint and lead evidence, on 12.06.2014, suit was dismissed under Order 9 Rule 3 CPC.

4. Thereafter, plaintiffs filed Civil Miscellaneous Application No. 24/2014 seeking condonation of delay in filing restoration application and prayed for registration of restoration application. By the impugned order, Trial Court has rejected the said application. Hence, the present petition.

5. Heard the learned advocate for the petitioners and learned advocate for respondent Nos. 1 to 3. Perused the memo of writ petition, its annexures and the impugned order.

6. Admittedly, delay of 50 days is caused in filing restoration application. Cause for delay given by the petitioners is that he was suffering from typhoid and was under medical treatment. Medical certificate to that effect is produced by the petitioners. Trial Court has rejected the application holding that the doctor who issued certificate is not examined and the delay is not sufficiently explained. Trial Court has adopted too technical approach in refusing to condone the delay and rejecting the restoration application. It is well settled that rules of procedure are handmaids of justice and they are prescribed to advance cause of justice and they should not be used to deny reasonable and fair opportunity to the party. Fifty days delay cannot be said to be inordinate and/or in the facts of the present case it cannot be said that reason of the petitioner suffering from typhoid was unacceptable.

7. No benefit is derived by the petitioners by belatedly approaching the Trial Court seeking restoration. Prayers made in the suit are in respect of immovable property. Opportunity needs to be given to the petitioners to contest the suit on merit. For the lapses committed by the petitioners, suitable cost can be imposed. In the interest of justice and to give opportunity to the

petitioners to contest the suit on merit, impugned order cannot be sustained. In the result, following order:

ORDER

- 1] Writ petition is allowed.
- 2] Impugned order dated 30.01.2020, passed by learned Civil Judge, Junior Division, Rahuri, below Exhibit-1 in Civil M.A. No. 24/2014, is hereby quashed and set aside.
- 3] Civil Miscellaneous Application No. 24/2014 is allowed, subject to petitioners paying cost of Rs. 25,000/- to the defendants in the Trial Court.

[NITIN B. SURYAWANSHI, J.]