



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

WRIT PETITION NO. 5650 OF 2015

Sakharam Kisan Mhaske
Through General Power of Attorney
Dadasheb Karbhari Kakade .. Petitioner

Versus

Kashinath Nivrutti Horkate
Since deceased through his L.Rs.
Godavari Kashinath Horkate and others .. Respondents

Shri Amol N. Kakade, Advocate for the Petitioner.
Shri Swapnil V. Lohiya, Advocate h/f Shri R. F. Totala, Advocate
for the Respondent Nos. 1 to 4.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 30TH NOVEMBER, 2023.**

FINAL ORDER :

. Heard the learned counsels for both the sides finally at the admission stage.

2. The judgment and order dated 27.03.2015 passed by the learned Civil Judge Senior Division, Aurangabad rejecting M. A. (RJI) No. 04 of 2014 as barred by limitation is questioned in this petition.

3. The petitioner is the original plaintiff, who filed Spl. C. S. No. 291 of 2000 for specific performance of contract. The respondents are the owners of the suit land and had agreed to

sell to the petitioner. The suit was classified to *sine-die* category by order dated 21.02.2003. By that time respondents had appeared and the issues were also settled. Thereafter on 28.06.2005 as the petitioner did not turn up, the suit was dismissed in default. Application for restoration of suit and condonation of delay was filed on 30.12.2013 numbered as M. A. (RJI) No. 04 of 2014. The respondents contested that application.

4. The learned counsel for the petitioner submits that the suit was classified to the *sine-die* category on 21.02.2003 and thereafter the petitioner was not noticed or informed when the same is declassified or brought on regular board. The petitioner has tendered explanation for not filing application within stipulated time. Oral evidence is also adduced.

5. The learned counsel for the petitioner submits that the learned Judge erred in holding that the petitioner was not diligent and the grounds for condonation of delay appear to be improper. The learned Judge committed error of jurisdiction in castigating the conduct of the petitioner. The approach of the learned Judge according to the learned counsel is hyper technical and unpragmatic.

6. The learned counsel for the respondents opposes the submissions of the petitioner. He submits that there is huge delay which is unexplained. The learned Judge has rightly

arrived at conclusion against the petitioner. He would submit that in fact the matter was settled and the petitioner was not interested in prosecuting the suit. He submits that there is no illegality or perversity as to warrant interference.

7. I have considered rival submissions of the litigating sides. I am surprised to notice that how the substantive proceedings can be classified to *sine-die* category. There is no reason or special circumstance surfacing in the matter to attribute *mala-fides* to the petitioner. Though there is delay, the equity can be balanced by awarding cost.

8. The petitioner should have been more diligent in prosecuting the matter, but that does not mean that he is to be non suited on technical ground. If the technical grounds are pitted against substantial cause of justice, then suit needs to be tried on merits. The learned Judge has adopted unpragmatic approach in holding that explanation of the petitioner is unbelievable. There is nothing on record to indicate that when the suit ceased to be *sine-die* category and whether the petitioner and his lawyer were informed accordingly.

9. For the reasons stated above, I deem it appropriate to restore the suit by condoning the delay by imposing cost upon the petitioner. The impugned judgment and order is unsustainable. I therefore pass following order.

ORDER

- A. The writ petition is allowed.
- B. The impugned judgment and order dated 27.03.2015 passed by the learned Civil Judge Senior Division, Aurangabad in M.A. (RJI) No. 04 of 2014 is quashed and set aside.
- C. The M. A. (RJI) No. 04 of 2014 stand allowed. The delay is condoned and the Spl. C. S. No. 291 of 2000 is restored to its original position.
- D. The petitioner shall pay cost of Rs. 30,000/- (Rs. Thirty thousands only) to the respondents within a period of two (02) weeks from today directly or shall deposit the cost before the Trial Court. In that case the respondents are at liberty to withdraw the same.
- E. The petitioner shall furnish an undertaking to the Trial Court that he shall co-operate for early disposal of the suit.
- F. The writ petition is disposed of in above terms.

[SHAILESH P. BRAHME, J.]