

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

CIVIL APPLICATION NO. 10533 OF 2023
IN
APPEAL FROM ORDER 53 OF 2023

CHANDRAKANT AMBADAS PATIL
VERSUS
JYOTI SUMANT SHINDE AND OTHERS

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Advocate for Applicant : Mr. S. Y. Mahajan
Advocate for respondent Mr. P. L. Chavan h/f Mr. Anant Devakate

CORAM : S. G. MEHARE, J.

DATE : 04.11.2023

PER COURT :

1. Heard the learned counsel for the applicant/appellant and the learned counsel for respondent Nos. 1 to 3.
2. The suit of the Appellant/original plaintiff bearing Regular Civil Suit No. 236 of 2000 was dismissed for default on 18.02.2010 by the learned Civil Judge, Junior Division, Paranda.
3. Thereafter, an application for restoration of the suit was filed. The learned trial court dismissed the application holding that explanation sought by the applicant in his application does not appear to be satisfactory and the plaintiff was not diligent in contesting the suit. No document to satisfaction of the submissions and stands taken

by him were filed on record. It has also been observed that the applicant were interested in protracting the application.

4. The learned counsel for the appellant would submit that application for restoration was not under order IX Rule 9 but it was under Order IX Rule 3 of the Code of Civil Procedure. There was short delay of 45 days.

5. The learned counsel for the respondents strongly opposed the application and contended that the reasons mentioned for delay are not plausible.

6. Perused the contents of the application and considering the explanation, the Court is of the view that the delay is liable to be condoned. Hence, the following order.

ORDER

- (i) The Civil Application is allowed.
- (ii) The Appeal from Order is restored.
- (ii) The learned counsel Mr. Devkate waives service for the respondents.

7. Stand over to 16.01.2024.

(S. G. MEHARE J)

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