

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

932 WRIT PETITION NO.14311 OF 2023

RAMDAS BHAGWAN NAROTE AND OTHERS
VERSUS
SATYABHAMABAI DILIP LOHOTE AND ANOTHER

Advocate for Petitioners : Mr. Nirmal Ramchandra J.

CORAM : SHAILESH P. BRAHME, J.

DATE : 09th NOVEMBER, 2023

PER COURT :

The petitioners are original defendants who are challenging order dated 17th March, 2023, allowing the application of the respondents / plaintiffs for restoration of the suit which was dismissed in default.

2. Learned counsel submits that suit of the respondents was dismissed on 27th April, 2017. Application for restoration of the suit was filed on 01st July, 2017. There was no independent application for condonation of delay nor any prayer for condonation of delay. The learned Trial Judge by the impugned order directly passed the order of restoration which is without jurisdiction. Even, the learned Judge has condoned the delay though a point to that effect is framed.

3. Technically, what the learned counsel is submitting may be correct. Once an application for restoration of suit is presented beyond period of limitation, the then applicants are expected either to pray for condonation of delay or to file separate application. However, I am of the considered view that a case in hand is exceptional one.

4. It appears that there is delay of 34 days in presenting application for restoration of suit. The application of the respondents seeking restoration of the suit, explains in paragraph nos. 2 and 3, the reasons for remaining absent. Learned Judge has also framed point no. 1 in respect of condonation of delay. By reasoned order, the point for determination which is framed at serial no. 1 is answered in the affirmative. Learned Judge has elaborately considered the explanation tendered by the respondents and then satisfied to condone the delay.

5. I do not see any perversity or patent illegality in the reasons assigned by the learned Judge to condone the delay. The procedure is sub-served to the cause of justice. The suit needs to be decided on merits and not to technicalities. Considering the exceptional circumstances, this Court under its extra ordinary jurisdiction can take cognizance of the things which are left to be done in the interest of justice. In that view of the matter, I find no merit in the petition. The Writ Petition is dismissed.

[SHAILESH P. BRAHME, J.]

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