

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2171 OF 2023

Ayub Adam Hodekar

...Petitioner

Versus

The Tahsildar, & Ors.

...Respondents

—————
*Mr. Sachindra B. Shetye, Ms. Sarika Shetye, Mr. Akshay Pansare &
Mr. Vrushali Shiwan for the petitioner.
Mr. C. D. Mali, AGP, for the respondent State.
Mr. Rohan P. Surve for respondent No.1.
Mr. Sachin Chavan for respondent No. 5a to 5d in WP/2148/2023 &
for respondent Nos. 3a to 3d & 4 in WP/2171/2023.*
—————

Coram : Sharmila U. Deshmukh, J.

Date : July 14, 2023.

P. C. :

1. By this petition the challenge is to the order dated 14th January, 2022 passed in Civil Misc. Appeal No. 30 of 2018 rejecting the petitioner's application for restoration of the suit which has been dismissed. The said Civil Misc. Appeal was filed against the order dated 10th July, 2018 whereby the District Judge has dismissed the application of the petitioner seeking restoration of the Regular Civil Suit No. 161 of 2008 which was dismissed for default on 6th March, 2017.

2. The facts of the case are that the suit was dismissed on merits

earlier and against that dismissal, Civil Appeal No. 66 of 2011 came to be preferred which was allowed and the suit was remanded to the Trial Court which now came to be dismissed for default.

3. Heard Ms. Sachindra B. Shetye, learned counsel for the petitioner, Mr. C. D. Mali, learned AGP for the respondent State, Mr. Rohan P. Surve, learned counsel for respondent No.1 and Mr. Sachin Chavan, learned counsel for respondent No. 5a to 5d in WP/2148/2023 & for respondent Nos. 3a to 3d & 4 in WP/2171/2023.

4. Learned counsel for the petitioner submits that sufficient explanation was tendered seeking restoration of the suit which was dismissed for default. He would contend that there was a specific contention that the appellant is in service of the Airport Authority, Mumbai and as such he could not attend the Court and neither his counsel attended.

5. *Per contra*, learned counsel appearing for the respondent Nos. 5a to 5c has tendered compilation of document to point out that the proceeding had become infructuous as the order is passed by the Sub-Divisional officer under section 5 of the Environment Protection Act, 1986 directing the removal of subject structure as the same is in violation of the Coastal Regulation Zone. He would further submit that in view of this fact, the petitioner will have to adopt necessary proceedings. He has drawn support from the

provision of section 22 of the Environment Protection Act, 1986 and would contend that challenge to order passed under section 5 of the Environment Protection Act, 1986 is barred before the Civil Court under section 22 of the Environment Protection Act, 1986.

6. Considered the submissions.

7. It is not disputed that the petitioner is in service of the Airport Authority, Mumbai and as such it is probable that he is residing in Mumbai and in respect of the proceeding which are conducted in Ratnagiri at his behest he has entrusted the same to his advocate. It appears that his advocate did not attend the proceedings. No doubt, it is expected of the litigant to be diligent in prosecuting the proceedings and should keep himself informed the status of the proceeding and be in constant touch with his advocate to ensure that no adverse order is passed. However in the present case, it cannot be said that no explanation has been tendered for the absence of the petitioner. In my opinion, in the interest of justice, it is necessary to permit the petitioner to contest the matter on merits and his suit should not be thrown out at the threshold for non prosecution.

8. As far as the order dated 11th January, 2023 passed by the Sub-Divisional Officer directing the removal of the construction is

concerned, it is open for the petitioner to adopt necessary remedies to challenge the same. Needless to clarify that, there is no stay to the order dated 11th January, 2023 and it is open for the petitioner to adopt remedies as advised in law.

9. In light of the above, the writ petition stands allowed.

10. Learned counsel for the parties submit that the parties will appear before the Trial Court on 7th August, 2023.

[Sharmila U. Deshmukh, J.]