

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1183 OF 2022

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Govind Shivram Kadam & Ors.

... Petitioners

V/s.

Maya Sashikant Pawar & Ors.

... Respondents

Mr. Siddhesh Pilankar i/by Ms. Sunita Pagey for the
petitioners.

Ms. Pranali Railkar with Mr. Ajay A. Joshi for
respondent No.5.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 6, 2023

PC.:

1. The petitioner challenges order passed by the Trial Court refusing to restore Special Civil Suit No.172 of 2012 on the ground that the suit was dismissed in exercise of power under Order 9 Rule 5 of the Code of Civil Procedure, 1908. The Trial Court relying on sub-clause (2) of Rule 5 of Order 9 of the Code of Civil Procedure, 1908 held that proper remedy of the plaintiff in such situation is to file fresh suit.

2. Learned advocate for the petitioner invited my attention to the Full Bench decision of this Court in **Hariba Tatyaba More (D) Thr. LRs & Ors. v. Dada Ekhatnath More & Ors.** reported in 2020 (2) ALL MR 823 (FB). Full Bench of this Court in

the said judgment has held that the Court has power to restore such suit in exercise of power under Section 151 of the Code of Civil Procedure, 1908. Therefore, the order passed by the Trial Court deserves to be quashed and set aside.

3. The impugned order dated 7 February 2020 passed by the 6th Additional Judge, Small Causes Court, Pune in Special Civil Suit No.172 of 2012 is quashed and set aside.

4. Special Civil Suit No.172 of 2012 is restored to the file of the Trial Court.

5. The amount of Rs.25,000/- deposited as per order dated 8 February 2022 be paid to the respondents.

6. The writ petition stands disposed of in above terms. No costs.

(AMIT BORKAR, J.)