

VRJ

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

WRIT PETITION NO.14180 OF 2022

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Vijay Ramchandra Saraf & Ors.

... Petitioners

V/s.

Arun Ramchandra Saraf (Deceased)

Through LR's.

... Respondents

Mr. Akshay Kulkarni i/by Mr. Ashutosh M. Kulkarni for
the petitioners.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 8, 2023

P.C.:

1. The petitioners-original defendants are challenging order passed by the Trial Court dismissing application seeking probate.
2. The Trial Court after granting opportunity to the parties to lead evidence in support of sufficient cause for remaining absent on the date of dismissal, recorded a finding that two proceedings, miscellaneous application for probate and Special Civil Suit No.157 of 1997 for partition between the parties, were pending on the date of dismissal of probate application. It is undisputed fact that both proceedings were directed to be decided jointly. The applicants therein were expecting that both proceedings would be clubbed and would be heard together. The applicants were, therefore, under bona fide impression that both proceedings would

be decided simultaneously furnishes sufficient cause for non-appearance of the parties.

3. Even otherwise, valuable rights of the parties in relation to immovable property are involved. Therefore, the Trial Court was justified in allowing the application for restoration. However, the Trial Court ought to have directed the applicants to pay the costs. Hence, it is directed that the respondents shall pay costs of Rs.10,000/- to the petitioners as a condition precedent.

4. Subject to above modification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)