

Harish

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9473 OF 2021**

Swastik Industries & Ors. ...Petitioners

V/s.

Madhusudan N. Rana ...Respondent

Mr. Ashok R. Pande i/b Shobhit Shukla for the
Petitioners.

Mr. R. D. Ojha i/b Ridhima Mangaonkar for Respondent.

**CORAM : MADHAV J. JAMDAR, J.
DATE : 20th JANUARY, 2023**

P.C.:

1. Heard Mr. Pande, learned counsel appearing for the
Petitioners and Mr. R. D. Ojha, learned counsel appearing for
the Respondent.

2. By impugned order dated 24th September, 2021 the Suit
bearing R.A.E. Suit No. 62 of 2017 filed by the Petitioners was
dismissed on the ground that although the matter is fixed for
hearing, the Plaintiffs failed to adduce oral evidence. It is
observed that although, sufficient opportunities were granted
to the Plaintiffs, the Plaintiffs failed to adduce evidence.

3. Mr. Pande, learned counsel appearing for the

Petitioners state that he was personally suffering from Covid and therefore, no steps could be taken to adduce oral evidence.

4. Mr. Ojha, the learned counsel appearing for the Respondent on instructions states that if some cost is paid, then the Respondent has no objection for setting aside the order of dismissal of Suit.

5. In the facts and circumstances of this case, order dated 24th September, 2021 passed by the learned Judge, Small Causes Court at Mumbai below Exhibit 1 in R.A.E. Suit No. 62 of 2017 dismissing the Suit under Order 17, Rule 2 r/w Order 9 Rule 8 of CPC, 1908 for want of prosecution is quashed and set aside on the condition that the Petitioners pay cost of Rs. 25,000/- to the Respondent within a period of two weeks from today.

6. In view of setting aside the order dated 24th September, 2021 said R.A.E. Suit No. 62 of 2017 is restored to file of Small Causes Court at Mumbai.

7. Writ Petition is disposed of in above terms.

(MADHAV J. JAMDAR, J.)