



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

937 WRIT PETITION NO. 10115 OF 2023

LAXMIBAI MOHAN PAGORE  
**VERSUS**  
RAMESH MOHAN PAGORE AND OTHERS

Mr. M. R. Wagh, Advocate for the petitioner  
Mr. A. R. Vaidya, Advocate for respondent no.3

CORAM : R. M. JOSHI, J.  
DATE : 5<sup>th</sup> DECEMBER, 2024

**PER COURT :-**

1. This petition takes exception to order dated 22<sup>nd</sup> October, 2021 passed in Civil M.A. No. 290/2018, whereby the application for restoration of R.C.S. No. 1016/2007 came to be rejected.
2. Learned counsel for the petitioner submits that the suit is for partition and since it was filed through power of attorney holder, the petitioner personally did not know about the status of the said proceeding. It is also claims that the power of attorney holder did not inform to the petitioner about the same and this has resulted into dismissal of the suit. As far as dismissal of restoration application is concerned, it is claimed that the petitioner is illiterate lady and hence, in the interest of justice the order be set aside.
3. Learned counsel for respondent no.3 vehemently opposed

the petition. It is his contention that there is reason/explanation given for non appearance and as such it is not a fit case for allowing the petition.

4. Petitioner is a lady. The suit is for partition. As such all the parties plaintiff as well defendant have interest therein. The petitioner had filed affidavit before the learned Trial Court for seeking restoration of the suit. The said affidavit indicates that the same is not signed but thumb impression is made thereon which shows that she is illiterate. Hence, in the interest of justice, petition stands allowed however, subject to cost. The cost is determined at Rs.5,000/-. Cost be paid to the present contesting respondent no.3. Payment of cost is precondition for restoration of the original suit. In view of this, petition is allowed in terms of prayer clause 'B' subject to payment of cost.

5. Learned Trial Court is directed to decide the said proceeding within a period of one month. Parties are directed to appear on 6<sup>th</sup> January, 2025 before the Trial Court.

**(R. M. JOSHI, J.)**

ssp