



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

999 WRIT PETITION NO. 5739 OF 2023

Saheba Shripati Dhavale Through His Gpa Holder And Son Sarjerao Saheba
Dhavale

....Petitioner

VERSUS

The State Of Maharashtra And Others

.....Respondent

.....
Advocate for the Petitioner : Mr. Prakash Bhaushaeb Shirsath
AGP for Respondents 1 to 3 : Mr. V.M. Chate
.....

CORAM : ARUN R. PEDNEKER, J.

Dated : February 13, 2024

PER COURT :-

1. By way of present writ petition, the petitioner is challenging the judgment and order dated 12.4.2012 passed by the District Judge-7, Ahmednagar in R.C.A. No. 78/2008 and the order dated 2.2.2008 passed by the learned Civil Judge, Senior Division, Shrigonda in Misc. Application No. 1/2006, whereby the application filed for restoration of R.C.S. No. 445/1995 is rejected and the same is confirmed by the appellate Court.

2. Facts giving rise to the present writ petition can be summarized as under :-

The petitioner claims to be resident of village Khandgaon, Taluka Shrigonda, District Ahmednagar. The land Gat No. 95 situated at village Khandgaon is a forest land. It is the case of the petitioner/plaintiff that the State Government has allotted the lands to the backward class persons, poor persons and needy persons for cultivation and as per the said scheme, the State Government has allotted 5 Acres land from Gat No. 95 in favour of the petitioner by order dated 6.11.1968 by acceptance of some price from the petitioner under agreement called as 'Kabulayat'. It is the case of the petitioner that the name of the petitioner is also recorded in

the 7/12 extract and in possession column.

3. It is the case of the petitioner that in the year 1995 the respondents authorities started obstructing possession of the petitioner/plaintiff over the suit land and therefore, petitioner has filed suit for declaration and injunction. The suit, however, was dismissed for default on 6.8.2002. The petitioner, thereafter, filed Misc. Application No. 1/2006 on 24.12.2004 for setting aside the order dated 6.8.2002 and restoration of his suit.

4. It is the contention of the petitioner that petitioner is 85 years old and at the relevant time, although he had engaged an advocate, he was not instructed sufficiently. It is his further contention that due to old age, he has hearing deficiency, the delay has occurred and he could not proceed with the suit in due diligence. The learned counsel submits that no prejudice will be caused to the defendant/State authorities if the suit is restored and if the suit is not restored, the substantial rights of the petitioner over the suit land would be lost.

5. While considering the application for restoration, the Courts below rendered a finding that though the petitioner is infirm person and his eye sight and hearing capacity is weak and though it is the contention of the petitioner that his advocate has not informed him about the dates fixed in the proceeding, in the cross examination, the son of the petitioner, power of attorney holder of the petitioner admitted that his father has engaged advocate and the advocate informed him about the dates of hearing from time to time. The Courts below also held that there is no documentary evidence on record to show that petitioner is physically weak and held that the son of the petitioner could have come to the Court. Considering the evidence of the petitioner/plaintiff, the application filed by the present petitioner for restoration of the suit is dismissed by the trial Court and the same is upheld by the appellate Court.

6. Petitioner has challenged both these orders in this writ petition. The learned counsel for the petitioner submits that the petitioner is infirm

person, he is 85 years of age and no further evidence should have been asked by the Court as regard weakness of the petitioner. He further submits that no harm will be caused to the respondents, if the suit of the petitioner is restored. He, therefore, prays for condonation of delay and restoration of the suit.

7. Per contra, the learned AGP appearing for the State submits that cross examination of the son of the petitioner indicates that advocate was engaged and that the dates were informed. The learned AGP further submits that there is no evidence on record produced to show as to why there is so much delay in filing the restoration application and therefore, the learned AGP prays for dismissal of the writ petition.

8. Having considered the rival submissions, it is to be noticed that the petitioner is old aged person of 85 years and no harm would be caused to the respondent, if the restoration application of the petitioner is allowed. In the event, the suit is not restored, the substantial rights of the petitioner would be lost. While dismissing the application, both the Courts below were hyper technical. The suit is at the preliminary stage and as contended by the petitioner, there is even no written statement filed in the suit. As such, no prejudice would be caused to the defendant/respondent authorities if the suit of the petitioner is restored. However, some costs needs to be imposed on the petitioner.

9. In view of the above, the writ petition is allowed. The impugned orders passed by the Courts below are quashed and set aside. The application filed for restoration of suit is allowed by condoning the delay in filing the application. Suit of the plaintiff/petitioner is restored. However, the petitioner to pay cost of Rs.2,000/- to be paid to the Aurangabad High Court Bar Association Library, within a period of six weeks..

(ARUN R. PEDNEKER, J.)

ssc/