

*Shabnoor*

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3292 OF 2019

B. T. Patil & Sons Belgaum (Constn)  
Pvt. Ltd.

... Petitioner

**V/s.**

The State of Maharashtra  
Represents by Bhim Canal Circle & Anr.

...Respondents

Mr. Mandar Soman for petitioner.

Mr. Hamid Mulla, AGP for State – respondent No.1.

Mr. Sachin Gite for respondent No.2.

**CORAM : AMIT BORKAR, J.**

**DATED : DECEMBER 10, 2024**

**P.C.:**

1. **Rule.** Rule made returnable forthwith.
2. The petitioner (original plaintiff) is challenging the judgment and orders dismissing the proceedings under the provisions of the Arbitration Act, 1940, which would have otherwise culminated in the passing of a money decree in the petitioner's favor. The petitioner contends that the dismissal of the suit by the Trial Court and subsequent rejection of the application for restoration by both the lower courts is erroneous and unjustified.
3. The Trial Court dismissed the petitioner's suit by exercising powers under Order XVII, Rule 2 of the Code of Civil Procedure, 1908 (CPC), vide order dated 25th April 2008. This dismissal was

premised on the petitioner's continued failure to supply an amended copy of the plaint for two years and absence on the date fixed for hearing. The petitioner filed an application under Order IX, Rule 9 of the CPC, seeking restoration of the suit. Both the Trial Court and the Appellate Court dismissed this application, citing the petitioner's lack of diligence and failure to show sufficient cause for the prolonged inaction and absence.

4. The pivotal issue for consideration is whether the petitioner has demonstrated "sufficient cause" under Order IX, Rule 9 of the CPC for the restoration of the suit. While the Courts below have emphasized the petitioner's conduct, it is a settled principle of law that procedural rules are intended to aid justice and not defeat substantive rights. As observed by the Hon'ble Supreme Court in *N. Balakrishnan v. M. Krishnamurthy* [(1998) 7 SCC 123], the term "sufficient cause" should be interpreted liberally, especially when the consequences of dismissal are grave, as in the present case, where the claim involves a substantial monetary decree.

5. The reasons assigned by the petitioner for absence on the date of dismissal of the suit—that he had to attend a colleague's wedding in Pune—appear plausible, though not ideal. Courts have held that procedural lapses or inadvertent absence should not override the primary objective of delivering substantive justice. Unless the absence or delay is shown to be deliberate, mala fide, or amounting to abuse of the process of law, the Courts should be inclined toward granting relief to prevent irreparable harm.

6. While the petitioner's conduct in failing to supply the

amended plaint for two years indicates negligence, such lapses can be adequately addressed by imposing costs to compensate the respondents for any inconvenience caused. Restoration of the suit would serve the ends of justice, ensuring that a potentially meritorious claim is adjudicated on merits rather than being defeated on technical grounds.

**ORDER:**

(i) Rule is made absolute in terms of prayer clause (b). However, this is subject to the condition that the petitioner pays costs of ₹20,000/- to the respondents within six weeks from today.

(ii) In the event of the respondents refusing to accept the costs, the petitioner shall deposit the same with the Trial Court, leaving it open for the respondents to agitate their claim for costs before the same Court.

(iii) It is clarified that the petitioner shall not be entitled to claim interest for the period between the date of dismissal of the suit (25th April 2008) and the date of this judgment.

(iv) The Trial Court is directed to restore the suit to its original file and proceed expeditiously in accordance with law, ensuring that no further delays are caused.

7. The writ petition stands disposed of in above terms.

**(AMIT BORKAR, J.)**