

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

WRIT PETITION NO. 17868 OF 2024

Rishabh Subhash Talera

... Petitioner

vs.

Sumandevi Chandulal Talera andd Ors.

... Respondents

Mr. Nitin P. Deshpande :-	Advocate for Petitioner.
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CORAM : S. M. MODAK, J.

DATE : 11th DECEMBER 2024

P. C. :-

1. Heard learned Advocate Mr. Deshpande for petitioner/ opponent in Civil Miscellaneous Application No.1850 of 2023. The petitioner is a defendant in Regular Civil Suit No.307 of 2012. The Suit abated for not bringing Legal Representatives on record. Prior to the abatement this petitioner was defendant No.1 before the trial Court. The copy of plaint is on page No.28.

2. The original plaintiff has filed application for restoration of Civil Miscellaneous Application No.1838 of 2023. There was also an

application for condonation of delay caused in filing restoration application. The delay condonation application was allowed without hearing present petitioner. Therefore the present petitioner challenged that order before this Court. He has succeeded.

3. Considering experience, the petitioner in application for restoration appeared on his own and filed an application dated 9th September 2024 for granting an opportunity to contest that application (page No.64). It was rejected by the Court of Jt. Civil Judge Senior Division, Pune on 18th November 2024. The reasons find place in paragraph No.4. The learned trial Judge has recorded in paragraph No.4 as under :-

“However, in the case at hand the suit is not dismissed bu the application for restoration of Civil Miscellaneous Application was denied registration for want of office compliance. Thus the order was passed before registration of Civil Miscellaneous Application.”

4. The learned Judge wants to suggest the Civil Miscellaneous Application is not registered. However, in the title clause registration No.1838 of 2023 is already there. If the party against whom there will

be an order if he wants an opportunity before the concerned Court on its own, how the Judge seized of the proceedings deny him right of appearance exercised *suo moto*. This is very technical view. The order *ex facia* illegal. There is no need to issue notice before admission. Reason is this Court has not given direction to Civil Court to dismiss Civil Miscellaneous Application for setting aside abatement. I find substance to allow the Writ Petition. Hence the following order is passed :-

ORDER

- (i) The order dated 18th February 2024 passed by the Court of Jt. Civil Judge Senior Division, Pune in Civil Miscellaneous Application No.1838 of 2023 is set aside.
- (ii) The petitioner is directed to appear in Civil Miscellaneous Application No.1838 of 2023 and is permitted to file reply.
- (ii) The trial Court to decide Civil Miscellaneous Application No.1838 of 2023 on the basis of its own merit.

5. Writ Petition is disposed of.

[S. M. MODAK, J.]

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