



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

Writ Petition (WP) No. 1092 of 2024

Padmashekhar S/o Sukhlal Shah

Versus

State of Maharashtra through the Collector, Akola and another

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri C.A.Joshi, Advocate for the petitioner.

Shri H.D.Dubey, AGP for the respondent/State.

Shri M.S.Sharma, Advocate for the respondent no.2.

CORAM : N.R.BORKAR, J.

DATED : 23rd AUGUST, 2024.

This petition takes exception to the order dated 21st October, 2023 passed by the learned 4th Joint Civil Judge, Senior Division, Akola, in MJC No. 2089 of 2022.

2. By the order impugned the learned Executing Court has rejected the application filed by the petitioner for restoration of the execution proceedings filed by him, as the same were dismissed for want of prosecution.

3. I have heard the learned counsel for the petitioner and the learned counsel for the contesting respondent and perused the impugned order.

4. The learned counsel for the petitioner submits that the application for restoration was made under sub-Rule (1) of Rule 106 of the Order XXI of the Code of Civil Procedure. However, inadvertently wrong provision was mentioned in the application. It is submitted that if there was some negligence on the part of the petitioner to prosecute the execution proceedings, then instead of rejecting the application, the learned Executing Court could have imposed some costs.

5. On the other hand, the learned counsel for the respondent submits that the learned Executing Court has rightly rejected the application.

6. There is substance in the submission of the learned counsel for the petitioner that if there was some negligence on the part of the petitioner to prosecute the execution proceedings, instead of rejecting the application for restoration, the learned Executing Court could have imposed the costs as there is always an element of negligence when the matters are dismissed for want of prosecution. The orders impugned are therefore, hereby quashed and set aside. The execution proceedings being Special Darkhast No. 56 of 2012 are

restored on the file of learned Executing Court. The petition is disposed of.

[N.R.BORKAR, J.]