



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

WRIT PETITION NO. 1690 OF 2019

(Maharashtra Co-operative Marketing Federation Ltd. vs. M/s. Bapu Seed Agro Agency)

*Office Notes, Office Memorandum of Coram,
appearances, Court's orders of direction,
and the Registrar's orders.*

Court's or Judge's order

Mr. P. D. Meghe, Advocate for the petitioner.
None for the respondent.

CORAM : ABHAY J. MANTRI J.

DATE : 13/12/2024.

1) Heard learned Counsel for the petitioner. None appears for the respondent though served. Perused the impugned order and record.

2) At the outset, it appears that on 17/02/2018, the execution proceeding was dismissed in default, as no steps were taken by the petitioner. However, on the same day, the petitioner moved an application for restoration of the execution proceeding, which came to be rejected, holding that despite giving the petitioner an opportunity, no effective steps were taken and, therefore, rejected the application.

3) Learned Counsel for the petitioner contended that the petitioner is a Co-operative Society registered under the Maharashtra Co-operative Societies Act, 1960; however, the mother of the learned advocate was serious; therefore, he left the court to attend his mother. On the same day after the passing of the order, a learned advocate for the petitioner returned to the Court and moved an application for restoration of the execution proceeding. However, without considering the

reasons stated in the application, the learned Judge rejected the application to restore the execution proceeding. Due to the passing of the impugned order, the petitioner Society suffered a huge loss. He further submitted that the proceeding could be restored to its original stage by putting the condition that the steps be taken within the stipulated time. If the proceedings are not restored, it would cause prejudice to the petitioner. Hence, he has prayed for allowing the petition.

4) I have considered the contentions of the learned Counsel and perused the impugned order and record.

5) At the outset, it appears that proceedings have been pending before the learned trial Court since 2006. In the application, the learned Counsel for the applicant has categorically stated the reasons that his mother was in serious condition. Therefore, he had to leave the Court to see her. However, the proceedings were dismissed in default. Thereafter, in the afternoon session, he moved an application for restoration of the proceedings stating the reasons (in para 2) as above, which reads thus as under:-

"2) The mother of the advocate is a diabetic patient, and she is about 67 years old. Her son received a message that his mother was in serious condition. Therefore, he left the court area and rushed down to attend to her with his assistance. After returning the Adv. came to know that the Hon'ble Court has dismissed the execution case in default for another reason."

6) It is pertinent to note that this court, in the case of ***Sanjay Dagadappa Kapse vs. State of Maharashtra 2009 SCC Online Bom. 902*** has held that *"Where the matter is dismissed in default on account of slight negligence on the part of the party or Advocate in appearing before the Court, an oral application for*

restoration may be considered if made before the rising of the Court, and it is not necessary for the party to file an application for restoration in writing." Further observed that *"if the application has been moved for restoration of the proceeding on the same day, the application ought to have restored to its original stage."*

7) Apart from that, it is a settled principle of law that parties shall not suffer due to the fault of their Advocate. Having considered the mandate laid down by this Court and the facts that, without considering the reason stated in the application, passed the impugned order, which is not sustained in the eyes of the Law. Thus, in my view, it would be proper to allow the petition by setting aside the impugned order. If the petition is allowed, it would not cause prejudice to the other side. On the contrary, if the order is not set aside, then it would cause prejudice to the petitioner. In the aforesaid background, I proceed to pass the following order:-

ORDER

1. The Petition is allowed.
2. The impugned order dated 17/02/2018 rejecting the application to restore the Special execution proceeding bearing No.63/2006 is hereby quashed and set aside. The Special Execution Darkhast No.63/2006 is restored to its original stage.
3. Inform the learned trial Court accordingly.

(ABHAY J. MANTRI, J.)