



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

14 WRIT PETITION NO. 6113 OF 2017

**DIGAMBAR GOVINDRAO TAKALE
VERSUS
MUKUND KESHAV SARWADE AND OTHERS**

...

Advocate for the Petitioner : Mr. R. P. Bhumkar
Advocate for Respondent Nos. 1 and 2 : Mr. K. J. Ghute Patil

...

CORAM : KISHORE C. SANT, J.

Dated : March 04, 2025

PER COURT :-

1. Heard.
2. The only question in the petition is about dismissal of the suit in default and thereafter, rejection of the application for restoration. The learned Joint Civil Judge, Junior Division, had dismissed the suit of the petitioner bearing RCS No. 24 of 2004 as the petitioner did not adduce any evidence.
3. The petitioner had filed an application for restoration assigning the reasons that he was not feeling well and therefore, he could not take steps in the suit. The learned Trial Judge by order dated 29.03.2011, rejected the application stating that no proof is produced on record that

the petitioner is not well.

4. The petitioner has challenged the said order by filing Miscellaneous Civil Appeal. The learned Appellate Court, by order dated 04.08.2016, also dismissed the application on the ground that he had no jurisdiction. The petitioner is thus before this Court.

5. After having heard the petitioner, it does appear that, the approach of the petitioner was casual in conducting the suit. The reason assigned for absence is also not inspiring confidence as the petitioner has failed to produce on record medical certificate showing that he was suffering from any health issues.

6. The learned Advocate for the petitioner vehemently submits that, the opportunity ought to have been given to contest the suit on merits. Rejection on technical ground has resulted in causing prejudice to him.

7. Learned Advocate Mr. K. J. Ghute Patil for respondent Nos. 1 and 2 opposes the petition. He submits that, the suit is not dismissed only for absence on one or two occasion, but it is because consistently the petitioner failed to

adduce evidence and to take effective steps in the suit. He thus, opposes the petition.

8. Considering that, the substantive rights of the parties are involved in the suit, it would be in the interest of justice to restore the suit. At the same time, it needs to be considered that the respondents are also put to hardship as they have attended the proceeding for a long period and even now, they would be required to contest the suit.

9. Considering above, this Court finds that, end of justice would meet by allowing the petition and imposing some cost to the petitioner. Hence following order :

ORDER

i. The writ petition stands allowed in terms of prayer clause "B" subject to petitioner paying cost of Rs. 5000/- each to both the respondents in the Trial Court within a period of six weeks from today. Only subject to above condition, the suit shall be restored.

ii. The proceedings of RCS No. 24 of 2004 shall stand restored to its original position before the learned Civil Judge, Junior Division, Kallam Dist. Osmanabad.

iii. Looking to the fact that, the suit is of the year 2004, the Trial Court shall dispose off the suit as earlier as possible.

iv. The petitioner and the respondents shall not seek any unnecessary adjournments. If unnecessary adjournments are sought, the Trial Court may impose heavy cost compensating the other side.

v. The writ petition stands disposed off.

(KISHORE C. SANT, J.)

PRW