



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 10759 OF 2025

TEJRAJ SAHEBRAO SARUK

VERSUS

RAMDAS AMBADAS KUMBHAR AND OTHERS

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Advocate for the Petitioner : Mr. Gore Ravindra Vitthal

AGP for Respondents No.1 & 2: Mr. S. B. Bhapkar

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CORAM : ARUN R. PEDNEKER, J.

DATE : 26.09.2025

PER COURT:

1. Heard.

2. The learned counsel for the petitioner submits that the petitioner challenges the order passed by the appellate court dismissing the application filed by the petitioner seeking to restore the appeal dismissed by order dated 27.11.2019. The application for restoration is filed on 05.05.2023.

3. The facts in brief are that the respondent filed a civil suit for removal of encroachment. The suit is decreed on 26.03.2013. The appeal is filed by the petitioner on 10.06.2013. The said appeal was dismissed in default on 27.11.2019 and the application for restoration was filed on 05.05.2023. The learned counsel for the petitioner submits that during the prevalent

Covid-19 times, the petitioner was not in contact with his advocate and that he was not aware of the dismissal of suit in default. The matter was admitted and pending before the appellate court and that there was no occasion for him to contact his advocate. However, the trial court has taken into consideration that the petitioner was defending the execution proceeding at the relevant time and, thus, the appellate court has inferred that the petitioner had knowledge of the proceeding before the appellate court being dismissed in default and, as such, dismissed his application for restoration of appeal on the ground of delay. Challenging the said order the present writ petition is filed.

4. The learned counsel for the respondents / original plaintiffs has placed on record sale deed qua the same property. He submits that the sale deed dated 01.07.2024 is executed by the petitioner, whereby petitioner has sold the suit land to a stranger i.e. son of respondent no.3.

5. The learned counsel for respondents no.1 and 2 submits that the fact that the property is sold is not brought to the notice of the appellate court, when the application for restoration was filed. He submits that in the sale deed the petitioner herein has given up all his rights and has transferred the property to the third person and that he does not have locus to prosecute the present appeal.

6. In response, the learned counsel for the petitioner submits that the sale deed would be subject to the outcome of the present petition.

7. I have perused the sale deed. In the sale deed, there is no clause mentioned that the sale would be subject to the outcome of appeal. The petitioner has not taken permission of the court for sale of suit property. The sale is after the decree having been confirmed by the appellate court and during the pendency of the restoration application and, is, prima facie, an illegality. However, no final opinion is given on the legality of the sale; as the purchaser is not before me. Notwithstanding the same, the present writ petition, at the instance of the petitioner, who has sold the suit property is dismissed for having lost the locus standi to prosecute the appeal.

8. The Writ Petition stands dismissed.

[ARUN R. PEDNEKER, J.]

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