



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.903 OF 2025**

1. Surekha W/o. Vinod Balwant,
Age: 42 years, Occu:- Agriculturist,
R/o. Dharawati Tanda, Tq. Parli Vaijnath,
Dist. Beed.
 2. Vinod S/o Narayan Balwant,
Age: 47 years, Occu:- Agriculturist,
R/o. Dharawati Tanda, Tq. Parli Vaijnath,
Dist. Beed.
 3. Rajaram S/o Narayanrao Balwant.
Age: 65 years, Occu:- Agriculturist,
R/o. Dharawati Tanda, Tq. Parli Vaijnath,
Dist. Beed.
- ..Petitioners
(Defendant Nos.2, 7 and 8)

Versus

1. Kashinath S/o Sukhdev Rathod,
Age: 69 years, Occu:- Agriculturist,
R/o. Dharawati Tanda, Tq. Parli Vaijnath,
Dist. Beed.
 2. Ram S/o Hiru Rathod,
Age: 79 years, Occu:- Agriculturist,
R/o. Dharawati Tanda, Tq. Parli Vaijnath,
Dist. Beed.
 3. Kailas S/o Ram Rathod
Age: 29 years, Occu:- Agriculturist,
R/o. Dharawati Tanda, Tq. Parli Vaijnath,
Dist. Beed.
 4. Vilas S/ Ram Rathod,
Age: 28 years, Occu:- Agriculturist,
R/o. Dharawati Tanda, Tq. Parli Vaijnath,
Dist. Beed.
 5. Laxman S/o. Narayan Chavan,
Age: 48 years, Occu:- Agriculturist,
R/o. Dharawati Tanda, Tq. Parli Vaijnath,
Dist. Beed.
- ..Respondent
(Plaintiff)
- ..Respodents
(Defendant Nos.1, 3 to 5)

...
Mr. H. V. Tungar, Advocate for the Petitioners.
Mr. A. A. Phad, Advocate for Respondent No.1.
Respondent Nos.2 to 5 are served.

...
CORAM : S. G. CHAPALGAONKAR, J.
DATED : 29th JULY, 2025.

ORDER:-

1. The petitioners impugn order dated 18.11.2024 passed by Civil Judge Junior Division, Parli Vaijnath in Civil M. A. No.191/2020, thereby restoring Regular Civil Suit No.445/2017, which was dismissed for want of prosecution vide order dated 29.02.2020.

2. The petitioners are original defendants in Regular Civil Suit No.445/2017. The respondent no.1 filed said suit seeking declaration that Sale Deed No.1858/2017 pertaining to land Gut No.225 situated at Waijwadi, Taluka Parli Vaijnath is not binding on his rights and perpetual injunction against defendants restraining them from interfering in his possession. The petitioners/defendants refuted averments in plaint by written statement filed below Exhibit-18. According to petitioners, suit is instituted only with intention to harass them.

3. The Trial Court framed issues and posted matter for evidence of plaintiff. Since plaintiff failed to lead his evidence, Trial Court dismissed suit for want of prosecution vide order dated 29.02.2020. The respondent no.1 filed Civil M. A. No.191/2020 seeking

restoration of suit. The learned Judge of Trial Court allowed Civil M. A. and restored suit subject to deposit of cost of Rs.2000/- in the office of T.L.S.A., Parli Vaijinath.

4. Mr. Tungar, learned Advocate appearing for petitioners by inviting attention of this Court to Roznama, submits that on 02.04.2019 issues were framed in suit. The plaintiff was consistently absent thereafter and ultimately, Trial Court passed order of dismissal of suit dated 29.02.2020. He would, therefore, urge that intention of plaintiff to harass defendants is writ large from his conduct. By inviting attention of this Court to reasons in impugned order, he would submit that respondent could not support his application for restoration by reasonable explanation for his non-appearance. Although respondent has taken ground of ill-health, no supportive material indicating medical treatment is produced. The Trial Court allowed restoration of suit in absence of satisfactory explanation for consistent absence of respondent/plaintiff.

5. Per contra, Mr. Phad, learned Advocate appearing for respondent no.1 supports impugned order.

6. Having considered submissions advanced, it can be observed that Trial Court had framed issues in suit on 02.04.2019. The Roznama shows that from 17.06.2019 till 30.01.2020, plaintiff as

well as defendants or their Advocates were absent. Lastly, suit came to be dismissed on 29.02.2020 for want of prosecution. The respondent filed Civil Miscellaneous Application No.191/2020 for restoration of suit giving reason of his old age and ill-health. It is true that, no medical evidence is produced on record, but fact remains that Covid situation was subsisting at the relevant time and application for restoration was also moved during subsistence of Covid situation. Apparently, respondent is aged about 70 years. The learned Trial Court in exercise of his discretion allowed restoration of suit. Pertinently, defendants or their Advocate were also consistently absent before Trial Court.

7. In this background, dismissal of suit will have to be treated under Order IX Rule 3 of Code of Civil Procedure. Although application for restoration is filed referring to Order IX Rule 9, application can be considered under Order IX Rule 4 of Code of Civil Procedure. The absence of respondent/plaintiff on the date of dismissal of suit cannot be said to be intentional or deliberate, atleast no material is brought on record in this regard by petitioners. In this background, this Court has no reason to exercise extraordinary jurisdiction under Article 227 of the Constitution of India and interfere in well reasoned order passed by Trial Court directing restoration of suit.

8. In the background of fact of this case, when issues are framed long back and matter was ready for evidence since 2019, it is apposite that Trial Court would expedite hearing of suit and endeavour to dispose the same preferably within period of one (01) year from the date of this order.

9. In light of above, Writ Petition stands dismissed with aforesaid directions.

(S. G. CHAPALGAONKAR)
JUDGE

Devendra/July-2025