



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

WRIT PETITION NO. 14989 OF 2023

Raheman S/o Mohmmad Ishak Shaikh,
Age : 57 years, Occu.: Fitter Work,
R/o. Naikwadpura, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

...Petitioner
[Orig. Plaintiff]

Versus

1. Chand S/o Shahabuddin Shaikh (Deceased),
Through his legal heirs

1(A). Sammer S/o Chand Shaikh,
Age- 37 years, Occu- Driver,
R/o. Naikwadpura, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

1(B). Jammer S/o Chand Shaikh,
Age : 34 years, Occu. Driver,
R/o. Naikwadpura, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

2. Nasimabi W/o Chand Shaikh,
Age : 55 years, Occu. Housewife,
R/o. House No. 37/2, Naikwadpura,
Sangamner, Tq. Sangamner, Dist. Ahmednagar.

3. Arefa w/o Raheman Shaikh,
Age : 52 years, Occu. Housewife,
R/o. Naikwadpura, Sangamner,
Tq. Sangamner, Dist. Ahmednagar.

...Respondents
[Defendants & Ori. Plaintiff]

.....

Mr. K. N. Shermale – Advocate for the Petitioner
Mr. V. Y. Bhide – Advocate for Respondent Nos. 1(A), 1(B) and 2
Respondent No. 3 is served

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CORAM : NEERAJ P DHOTE, J.

RESERVED ON : 3RD NOVEMBER, 2025
PRONOUNCED ON : 4TH NOVEMBER, 2025

ORDER : -

1. Heard the learned Advocate for the Petitioner and the learned Advocate for the contesting Respondent Nos. 1(A), 1(B) and 2. The Respondent No. 3 is the original plaintiff like the Petitioner and a formal party. Perused the papers on record.

2. The Petitioner and Respondent No. 3 are the husband and wife, respectively. They preferred R.C.S. No. 1342 of 2016 before the learned Civil Judge Senior Division, Sangamner, for recovery of possession of the suit property and rent. As the Defendant No. 1 died on 04.02.2018, the suit stood abated as the legal representatives of Defendant No. 1 were not brought on record within the prescribed period. The Application below Exh. 29 was preferred for setting aside the abatement and the Application below Exh. 34 was filed for condonation of delay and for taking on record the Legal Heirs of the Deceased / Respondent No. 1. The said Applications were allowed by orders dated 19.07.2019 and 20.01.2020, respectively. However, as steps were not taken by the Plaintiff, the learned Civil Court passed the impugned order dated 18.11.2021, dismissing the suit for default. The Applicants thereafter filed an Application for condonation of seven (7) days' Delay caused in preferring the Application for restoration of the suit, which came to be dismissed by the learned Civil Court by order dated 18.09.2023. Hence, this Writ Petition under Article 226 and 227 of the Constitution of India.

3. It is submitted by the learned Advocate for the Petitioner that, the impugned order is against the settled principles of law. The Petitioner was prevented from taking appropriate steps in the suit due to limited functioning of the courts in view of Corona pandemic. Though, the stage of the suit was 'awaiting notice', by the impugned order, the suit came to be dismissed. The earlier conduct of the parties cannot be taken into consideration while considering the Application for condonation of delay. The Petitioner had led evidence in support of the Application for condonation of 7 [seven] days' delay in preferring the Application for restoration of the suit. The learned Civil Court committed an error in dismissing the Application. He submitted that the Petition be allowed.

4. The Petition is opposed by the learned Advocate for the contesting Respondents. He submitted that the remedy available to the Petitioner before the learned Civil Court was the Application under Section 148 of the Code of Civil Procedure [for short 'CPC'], as the abatement was set aside and the Application for condonation of delay for bringing on record the legal heirs of the Deceased Defendant was allowed. The Application for condonation of delay was not maintainable. He submitted that the reply is filed opposing the Writ Petition, and the Petition be dismissed.

5. There is no dispute that the Petitioner and the Respondent No. 3 had preferred the aforesaid suit against Respondent Nos. 1(A), 1(B) and 2. There is also no dispute that the learned Civil Court by order dated 19.07.2019 set aside the abatement. There is also no dispute that *vide* order dated 20.01.2020, the Application for bringing on record the Legal Heirs of the Deceased/Defendant No. 1 was allowed. By the impugned order dated 18.11.2021, the learned Civil Court dismissed the suit for default by observing that, the suit was pending without any progress and the Plaintiffs were not interested to proceed further and in absence of Legal Heirs of Defendant No. 2, effective decree cannot be passed in the suit which was for recovery of possession.

6. The copy of *Roznama* of the said civil suit placed on record indicate that on 09.09.2021, 12.10.2021, and 18.11.2021, the stage was shown 'awaiting notice'. The *Roznama* dated 09.09.2021, show that both the sides and the learned Advocates were absent and the matter was adjourned due to Covid-19, however, on 18.11.2021, the impugned order of dismissal of the suit for default came to be passed. This appears strange. Be that as it may. To set aside the said order the Application was preferred by the Petitioner belatedly along with the Application for condonation of delay by giving reason of his ill-health. The said Application was contested by the contesting Respondents by filing their

say below Exh. 10. The Petitioner led the evidence in support of the Application for condonation of delay. He examined the Doctor as Witness No. 2. However, the impugned order came to be passed by observing that, as the medial certificate do not bear the serial number, OPD patient number, identification mark was not shown and the same was not in proper format and no OPD register and case papers were filed in support of the certificate, which were mandatory as per the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002 [hereinafter referred to as 'Regulations']. It is further observed in the impugned order that, the possibility of issuing false certificate cannot be ruled out and the evidence of the Doctor was discarded. It is further observed that, the Petitioner was not admitted in the hospital and as he was not serious, it was not necessary to take his care all the time and the Application could have been filed by Respondent No. 3 and discarded the evidence of Petitioner. Further, the learned Civil Court made observations that despite the order of setting aside the abatement and condoning the delay, the LRs of the Deceased / Defendant No. 1 were not taken on record and further observed that all these facts were sufficient to arrive at the conclusion that, the Applicants were in the habit to cause delay for everything and were not serious in prosecuting the case and as the matter was five (5) year old, it was dismissed as it was pending without any progress. It is further observed that the delay was not explained properly.

7. The core issue in the Petition is, whether the impugned order requires interference. The impugned order is passed on the Application for condonation of delay in preferring the Application for setting aside the order of dismissal in default. The evidence of Doctor, who is examined as Witness No. 2 show that, the medical certificate at Exh. 18, which was issued by him, was brought on record. The learned Civil Court by placing reliance on Regulation Nos. 1.3.3 and 1.3.2 of the aforesaid Regulations observed that, it was mandatory to maintain OPD register. The Regulation No. 1.3 is in respect of ‘maintenance of medical record’. Perusal of the same show that, as per Regulation No. 1.3.1, every Physician shall maintain the medical records pertaining to his/her **Indoor patients** for a period of three (3) years from the date of commencement of the treatment in a standard format laid down by the Medical Council of India. This Regulation nowhere speaks of maintaining the medical records in respect of the Outdoor patients. The Regulation No. 1.3.2 is in respect of providing the documents where request is made for medical records either by the patients / authorised attendant or legal authorities involved, within a period of 72 hours. The Regulation No. 1.2.3 provides for maintaining register of medical certificates giving full details of the certificates issued. It further provides that the identification marks of the patients be mentioned therein and the copy of the certificate be kept. Admittedly, there is no evidence or it is nobody’s case that the Petitioner was the Indoor patient with the said

witness Doctor. The tenor of the observations made by the learned Civil Judge show that, it misread the Regulation No. 1.3, which is in respect of maintaining the medical records. Secondly, the observation that, as the Petitioner was not serious, it was not necessary to take his care all the time, is without any supporting material. To say it in another word, the learned Civil Judge made the said observation out of his own imagination. The other observations made in paragraph no. 8 of the impugned order are in respect of the earlier proceedings in the suit. The same were unwarranted, as the only issue was, whether sufficient case was shown to allow the Application.

8. The observations made by the learned Civil Court in the impugned order are contrary to the material available on record and the settled legal principles in respect of the Application of Condonation of Delay. The occasion for preferring the Application for restoration of the suit arose due to the dismissal of the suit for default on such date when it was at the stage of 'awaiting notice'. Considering the above aspects of the matter, the reliance placed by the learned Advocate for the contesting Respondents on the provision of Section 148 of the CPC is misplaced. In this view of the matter, the impugned order requires interference and hence, the following order is passed: -

ORDER

[i] The Writ Petition is partly allowed.

- [ii] The impugned order dated 18.09.2023 rejecting the Civil M.A. No. 2/2022, is quashed and set aside.
- [iii] The Civil M.A. No. 2/2022 is restored to the file of the concerned Civil Judge Senior Division, Sangamner, for reconsideration and fresh decision in accordance with law, after hearing both the sides.
- [iv] The parties shall appear before the learned Civil Judge Senior Division, Sangamner, on 18.11.2025.
- [v] The Petition stands disposed off.

[NEERAJ P. DHOTE]
JUDGE

SG Punde