

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.7241 OF 2023**

1. Vishvas Vishnu Dhanawade (Deceased)
Through Legal Heirs
- 1A. Smt. Mangala Vishvas Dhanawade,
Age- 67, Occu.-Household
- 1B. Atul Vishvas Dhanawade
Age-41, Occu.- Service
(Power of Attorney Holder for all the Petitioners)
- 1C. Amol Vishvas Dhanawade
Age-37, Occu.- Service
Nos. 1 to 3 R/o. 1366, D Ward,
Uttreshwar Peth, Kolhapur
- 1D. Sarika Prakash Patil
Age- 38, Occu. Household,
R/o. C/o. Nirmala Sawant,
1172, D Ward, Guruwar Peth, Kolhapur ..Petitioners
(Original Plaintiffs)

Versus

1. Kasturibai Hirachand Shah (Deceased)
Through Legal Representative:
Dilip Hirachand Shah
Age-48, Occu.- Service,
R/o. House No. 9, Near Old Post Office,
Jaysingpur, Kolhapur
2. Vijay Ramchandra Mohite
Age-45, Occu.- Agriculturist,
R/o. Jadhav Wadi, E Ward,
District – Kolhapur ..Respondents

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Mr. Datta H. Pawar, Advocate for Petitioners.

Mr. Yuvraj Narvankar, Advocate for Respondents.

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CORAM : S. G. CHAPALGAONKAR, J.

RESERVED ON : 27th NOVEMBER, 2025.

PRONOUNCED ON : 5th DECEMBER, 2025.

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties,
matter is taken up for final hearing at admission stage.

2. The petitioners impugn order dated 18.07.2013 passed by Civil Judge Junior Division, Jaysingpur in Miscellaneous Civil Application No.35/2008, thereby declining to condone delay of 3 years, 5 months and 4 days caused in filing application for restoration of Regular Civil Suit No.27/2003.

3. The petitioners are legal representatives of plaintiff namely Vishvas vishnu Dhanawade (hereinafter referred as 'plaintiff no.1'). The petitioner/plaintiff no.1 and respondent no.2 instituted Regular Civil Suit No.27/2003 seeking redemption of mortgage executed in favour of respondent no.1. The respondent no.1 refuted claim in plaint contending that document was conditional sale and not mortgage. On 11.03.2005, plaintiff no.1 and his Advocate failed to appear in suit. Eventually, it was dismissed for want of prosecution. On 16.08.2008, plaintiff no.1 filed application for restoration of suit alongwith Miscellaneous Civil Application No.35/2008 seeking to condone delay of 3 years, 5 months and 4 days. The delay caused in filing application is attributed to illness of plaintiff no.1 during period from 04.09.2004 to 06.08.2008. The plaintiff no.1 relied upon his own evidence and evidence of Dr. Prakash Kadam, who issued certificate affirming illness of plaintiff no.1. The Trial Court on appreciation of evidence held that plaintiff no.1 could not make out sufficient cause to condone delay. Eventually, dismissed Miscellaneous Civil Application No.35/2008.

4. The plaintiff no.1 had filed Miscellaneous Civil Appeal No.47/2013 under Section 104 r/w. Order 43 of Civil Procedure Code before District Judge impugning order passed by Trial Court. The said Appeal was dismissed for want of prosecution on 06.09.2014, however, later on it was restored and finally withdrawn on 03.03.2023. The present Writ Petition is filed in year 2023 challenging order passed by Trial Court, after withdrawal of Appeal filed before District Judge.

5. Mr. Datta Pawar, learned Advocate appearing for petitioners would submit that plaintiff no.1 and respondent no.2 were plaintiffs in suit instituted for redemption of mortgage. The respondent no.2 was prosecuting suit. The plaintiff no.1 was totally dependent on him. However, due to his negligence, suit came to be dismissed for want of prosecution. The plaintiff no.1 was suffering from illness and was under medical supervision for four years, which caused delay in filing application for restoration. The delay is neither intentional nor deliberate. He would further submit that valuable rights of petitioners in respect of immovable property are involved in suit. The plaintiff no.1 was aged about 70 years, when suit was dismissed for want of prosecution. The Trial Court ought to have adopted liberal approach and condoned delay.

6. Per contra, Mr. Yuvraj Narvankar, learned Advocate appearing for respondents would support impugned order. He would invite attention of this Court to conduct of petitioners and submits that in present case

there is inordinate delay and in such case, strict approach required to be adopted. In support of his contentions he relies upon observations of Supreme Court in case of *Union of India and Another Vs. Jahangir Byramji Jeejeebhoy (D) Through His Lr.*¹.

7. Having considered submissions advanced by learned Advocates appearing for respective parties and on perusal of impugned order, it can be observed that petitioners are trying to explain delay of approximately four years giving reason of illness of plaintiff no.1. The Trial Court on appreciation of material on record observed that plaintiff no.1 was attending medical treatment at the distance of 70 kilometers from his home and visiting Doctor by undertaking journey. The plaintiff no.1 was never treated as indoor patient. It is not discernible from evidence tendered by plaintiff no.1 that he was unable to attend Court proceeding or his Advocate. The Trial Court observed that plaintiff no.1 was residing at Kolhapur. His Advocate was also resident of Kolhapur. Therefore, explanation for inordinate delay is unacceptable.

8. Apart from delay of about four years in filing application for restoration of suit, it can be observed that suit was jointly instituted by petitioner/plaintiff no.1 and respondent no.2. The plaintiff no.1 has filed application for restoration of suit. It is not case of plaintiff no.1

¹ 2024 SCC OnLine SC 489.

that he has been authorized by respondent no.2 to prosecute suit on his behalf.

9. Apart from aforesaid circumstances, it can be observed that plaintiff no.1 had challenged impugned order by filing Miscellaneous Civil Appeal before District Judge. Even said Appeal was dismissed for want of prosecution on 06.09.2014. Thereafter, it was restored by order dated 19.09.2014 and kept dormant till 03.03.2023. Upon filing Pursis at Exhibit-34, Appeal was withdrawn. If plaintiff no.1 has availed remedy of Appeal and withdrawn same without reserving his right to raise challenge in any other proceeding, this Court can not permit him to invoke its extraordinary jurisdiction under Article 227 of Constitution of India and challenge order passed in year 2008, after 15 years, by filing Writ Petition. This Court holds that conduct of petitioners would not warrant exercise of extraordinary jurisdiction of this Court and cause interference in well reasoned order passed by Trial Court.

10. In result, Writ Petition sans merit, hence, dismissed.

11. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE