

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIRCUIT BENCH AT KOLHAPUR****CIVIL REVISION APPLICATION NO.211 OF 2025****SUBHASH TIMAPPA BODA AND ORS****VERSUS****PADMAVATI SUBHASH SHIRSAD AND ORS.**

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Mr. Ashok B. Tajane i/by Ms. Kavita Shinde, Advocate for Applicants.
Ms. Asmita Killedar i/by Mr. Milind Deshpande, Advocate for
Respondent Nos.1 and 2.

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CORAM : S. G. CHAPALGAONKAR, J.**DATED : 18th SEPTEMBER, 2025.****FINAL ORDER:-**

1. The applicants impugn order dated 27.10.2021 passed by Civil Judge Senior Division, Solapur in Civil Miscellaneous Application No.433/2017, thereby allowing application for restoration in Regular Civil Suit No.289/2012.

2. The applicants are original defendants in Regular Civil Suit No.289/2012 pending before Civil Judge Senior Division at Solapur. The suit is instituted for specific performance of contract against applicants. The suit was dismissed for want of prosecution on 01.08.2017. The respondents/original plaintiffs filed Application No.433/2017 under Order IX Rule 9 of Code of Civil Procedure for restoration of suit. The Trial Court allowed Civil Miscellaneous Application vide impugned order dated 27.10.2021 and directed restoration of suit subject to cost of Rs.3000/-.

3. Mr. Ashok Tajane, learned Advocate appearing for applicants vehemently submits that jurisdiction under Order IX Rule 9 of Code of Civil Procedure can be exercised only upon sufficient cause for non-appearance is made out by party seeking restoration of suit. In present case, only reason employed for non-appearance is illness of Advocate and his hospitalization. However, record indicates that for five consecutive dates prior to dismissal of suit, plaintiffs as well as their Advocate was absent. Therefore, reason employed by plaintiffs for restoration of suit could not have been accepted. He would further submit that despite establishment of sufficient cause for non-appearance on particular date, Court should have refused to exercise discretion for want of bonafide in conduct of respondents/plaintiffs. In absence of compliance of mandatory requirements under Order IX Rule 9 of Code of Civil Procedure, Trial Court could not have set aside order of dismissal. In support of his contentions he relies upon observations of Supreme Court of India in case of *Pathapati Subba Reddy (Died) by Legal Representatives and Others Vs. Special Deputy Collector (LA)*¹.

4. Having considered submissions advanced, it can be observed that respondents/plaintiffs have instituted suit for specific performance of contract on the basis of oral agreement to sale dated 15.12.2005. The applicants are defendants in suit. They filed written statement refuting contentions in plaint. On 19.11.2012, suit was dismissed. The plaintiffs filed Regular Civil Appeal No.55/2013. On 30.01.2025,

¹ (2024) 12 SCC 336.

learned District Judge, partly allowed Appeal and remanded suit for trial. After remand, matter was fixed for evidence. On 01.08.2017, plaintiffs were absent. Eventually, it was dismissed for want of prosecution. The learned Trial Judge observed that plaintiffs and Advocate are continuously absent on 18.02.2017, 17.03.2017, 02.04.2017, 28.04.2017 and 19.06.2017. Hence, plaintiffs have lost interest in proceeding.

5. The respondents filed Miscellaneous Application No. 433/2017 seeking restoration on the ground that on 19.06.2017, applicant no. 2 was present in Court, however, his Advocate was hospitalized since 13.06.2017 and advised rest. The aforesaid contentions have been supported by discharge summary issued by hospital, which depicts that Mr. Mallikarjun Wale was admitted to hospital on 13.06.2017 and discharged on 21.06.2017. The possibility that he was advised rest for some period after discharge cannot be disbelieved.

6. The applicant no.1 recorded his evidence in support of restoration application. He was cross-examined on behalf of petitioners. From tenor of cross-examination, it is evident that, there is no denial to fact that respondents' Advocate was hospitalized, eventually, he could not attend proceeding from 19.06.2017 onward till date of dismissal of suit for want of prosecution. The learned Trial Judge accepted reasons for non-appearance as genuine and directed

restoration of suit, thereby affording opportunity to respondents/plaintiffs to proceed further on merits of matter.

7. Although Mr. Tajane, learned Advocate appearing for applicants heavily relied upon observations of Supreme Court in case of ***Pathapati Subba Reddy*** (supra), this Court finds that in facts of present case it is not discernible that plaintiffs' absentee was malafide or plaintiffs derived advantage by consistent absence. This Court finds that sufficient cause is made out for absence of plaintiffs on three consecutive dates till date of dismissal of suit. The discretion exercised by Court is in tune with legal position governing powers of Court for restoration of suit, so also it is in accordance with principles of natural justice and fair play.

8. In result, Civil Revision Application sans merit. Hence, dismissed.

(S. G. CHAPALGAONKAR)
JUDGE