

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 330 OF 2024

Late Dashrath Krishna Nilkh (deceased)
through LRs Genbhau Dashrath Nilakh ...Applicant

Versus

Late Ismail Usman Pathan (deceased)
through LRs Ismail Usman Pathan and
ors. ...Respondents

Mr. Pratiksha Keni, i/b Vivek Tadke, for the Respondents.
Ms. Pratiksha Keni, i/b Vivek Tadke, for the Respondents.

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CORAM: N. J. JAMADAR, J.
DATED: 20th FEBRUARY, 2025

PC:-

1. Heard the learned Counsel for the parties.
2. The challenge in this application is to an order dated 30th January, 2024 passed by the learned District Judge, Khed - Rajgurunagar, Pune, in Misc. Civil Appeal No.44 of 2019, whereby an appeal preferred by the applicant against an order passed by the learned Civil Judge rejecting an application for restoration of the suit being RCS No.3 of 1999, which was dismissed in default by an order dated 16th July, 2012, came to be dismissed affirming the order passed by the Trial Court.

3. In fact, the plaintiff, the predecessor-in-title of the applicant, had passed away on 13th September, 2011 before the said suit came to be dismissed for default in appearance, by order dated 25th July, 2012. The Trial Court as well as the learned District Judge were of the view that the appropriate remedy for the applicant was to seek setting aside of the abatement by filing an appropriate application under Order XXII of the Code of Civil Procedure, 1908.

4. The view taken by the Courts below cannot be faulted at. However, since the application was preferred under Order IX Rule 9 of the Code, perhaps inadvertently and under an incorrect impression of law, the applicant deserves liberty to file an appropriate application before the Trial Court to seek setting aside of the abatement in the suit and, consequently, the dismissal order.

5. The application stands disposed with liberty to file such application.

6. In the event such an application is filed, the Civil Court shall decide the same on its own merits and in accordance with law and after providing an effective opportunity of hearing to all the concerned parties.

[N. J. JAMADAR, J.]