



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.6962 OF 2025

DINESH BADRINARAYAN PANCHOLI, THR. POA., SMT.R.K.PANCHOLI
(DIED),THR. SON,R. K. PANCHOLI AND OTHERS

VERSUS

SAYYAD AJIJ SHAH S/O MEHAMOOD SHAH

Office Notes, Office Memoranda of Coram, Appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S.S. Das, Advocate for Petitioners.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATED : 17th DECEMBER 2025

PER COURT :-

1. Heard learned Advocate for the petitioners.
2. The petitioners have challenged the judgment and order dated 17.12.2024, passed by the Court of District Judge-2, Kelapur, thereby allowing the appeal bearing Misc. Civil Appeal No.14 of 2014, filed by the respondent, challenging the order of dismissing the application for restoration of suit.
3. Learned Advocate for the petitioners submits that the petitioners are original defendants in the suit bearing R.C.S. No.36 of 2009, which was filed by the respondent-plaintiff, seeking declaration and permanent injunction. The suit was dismissed in default by order

dated 17.01.2012 and thereafter, the respondent filed an application *vide* M.J.C. No.06 of 2012, for restoration of said suit, which came to be rejected by order dated 30.08.2014. Feeling aggrieved by the order of rejection of restoration of suit, the respondent filed Misc. Civil appeal No.14 of 2014, which came to be decided by the impugned judgment and order and same is allowed. As a result, the suit stands restored. The petitioners have challenged this order by way of instant petition.

4. The primary contentions canvassed on behalf of the petitioners are that the impugned judgment and order of restoration of suit is passed without considering the discrepancies and the evidence of two witnesses, who are doctors and were examined by the respondent-plaintiff, to show his medical ailment in support of his case for restoration of suit. Learned Advocate for the petitioners submits that there are contradictory statements in the depositions of these witnesses and the exact reason of ailment of the respondent is not established. He, therefore, submits that the reasons for restoration of suit were unbelievable and the restoration application ought to have been rejected.

5. A perusal of the impugned judgment and order passed by the appellate court shows that the appellate court has given due

consideration to the evidence of the two doctors, who were examined as witnesses. In view of the documents of prescription and certificates issued by these witnesses, the appellate court has found that the reasons about medical ailment of the respondent-plaintiff were believable. Further, having regard to the position of law that every litigation should be decided on merits after giving opportunity of hearing to both the parties, the appellate court has also observed that the plaintiff was not found to be completely negligent or to have acted with malafide. After considering the overall circumstances, the court thought it fit to allow the appeal subject to costs of Rs.10,000/-.

6. A perusal of the impugned judgment and order shows that there is no palpable error or any perversity in the approach adopted by the appellate court. As such, no interference is warranted with the impugned judgment and award. Therefore, the writ petition deserves to be dismissed.

7. In view of the above, the writ petition is dismissed with no order as to costs.

(PRAFULLA S. KHUBALKAR, J.)

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