IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.11420 OF 2026
IN WRIT PETITION NO. 12616 OF 2024
AND
WRIT PETITION NO. 12616 OF 2024

Nana Bhagwan Bangar
and others ..Applicants

Vs.

Machindra Apparao Andhare ..Respondent

Mr.R.K.Andhare, Advocate for applicants
Mr.V.M.Humbe, Advocate for respondent

CORAM : AJIT B. KADETHANKAR, J.
DATE : OCTOBER 29, 2026

PER COURT :-

Writ Petition No.12616 of 2024 was dismissed for want of prosecution. Civil Application No.11420 of 2026 was filed for restoration of the said Writ Petition. When the application was called out, after noticing consistent default on the part of the applicants/petitioners, this court was constrained to dismissed the application for want of prosecution. Further, liberty was given to the petitioner to get the matter restored subject costs of Rs.15,000/-.

2. Mr.R.K.Andhare, learned advocate who practices at Bhoom and appeared in this matter, has orally requested to restore the Civil Application. He submitted that due to weak financial condition of the applicant, the applicant may be discounted from paying the costs. At his request, the papers were called at 02.30 p.m.

3. Mr.Humbe, learned advocate for the respondent is present and in all fairness prays to pass an appropriate order. He submits that he has no objection for restoration of the Civil Application as also the Writ Petition. He, however, has strong observations on the merit of the Writ Petition.

4. Considering the matter in totality, I deem it appropriate to restore the Civil Application No.11420 of 2026 to its original position. The condition of payment of costs stands waived. The Writ Petition also stands restored to its original position.

In Writ Petition No.12616 of 2024 :-

5. The petitioner has taken exception to the order dated 26.03.2021 passed by learned joint Civil Judge Junior Division in R.C.S. No.201 of 2014. The application under Order XXVI Rule 9 of

the Code of Civil Procedure was filed at Exh.55 in the trial court. Vide said application, the petitioner/plaintiff sought appointment of a Court Commissioner for measurement of the property and placing the report on record. The application was opposed by the present respondent alleging that it would be the collection of evidence. After considering the arguments, the trial court has been pleased to reject the application on 26.03.2021.

6. With the able assistance of both sides, I have gone through the text of the impugned order and the case papers. I find that there is dispute over the a *Bandh* in between Gut No.782 and 783 of village Mankeshwar, Tq. Bhoom, Dist. Dharashiv. From the order it transpires that another suit i.e. R.C.S. No.207 of 2014 is pending in the same court at the behest of the respondent. In the said suit, the subject-matter property was also identical. In R.C.S. No.207 of 2014 the petitioner has filed similar application for appointment of Court Commissioner, which came to be dismissed even before passing of the impugned order. The trial court recorded its finding that on the same count, among the same parties and over the same subject-matter, an application was already rejected. I view of this, I find that the trial court cannot be said to have committed any error in rejecting the application (Exh.55).

7. In view of the above, I do not find any infirmity in the order passed by the trial court. The Writ Petition is devoid of any merit. The same is dismissed.

8. Considering that both the suits are between the same parties and concerning the identical suit properties, learned District Judge, Bhoom, Dist.Dharashiv, is requested to order clubbing of both the suits to be heard together by the same court.

[AJIT B. KADETHANKAR, J.]

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