



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

81 CRA NO. 256 OF 2025

PUSHPA ANANTRAO DESHPANDE

VERSUS

SUNIL PRABHATRAO CHAUDHARY AND ORS

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Advocate for the Petitioner : Mr. Barde Parag Vijay

Advocate for Respondent No. 1 : Mr. A.S. Bajaj

Advocate for Respondent No.3 : Mr. Anandsingh Bayas

Advocate for Respondent No. 4 : Mr. A. R. Vaidya

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CORAM : SHAILESH P BRAHME, J.

DATE : 06.03.2026

PER COURT :

Heard both sides. Revision application is directed against order dated 15.03.2023 passed in Civil Misc. Appln. No. 440/2018 restoring Special Civil Suit No. 211/2008 to its original position.

2. The respondent has filed Special Civil Suit No. 211/2008 for specific performance of contract in respect of a plot owned by present applicant. It is stated in the plaint that amount of consideration was Rs. 14,51,000/- and out of that earnest amount of Rs. 4,51,000/- was paid. The applicant has reservations for the said pleadings.

3. For the lapses on the part of the respondent/plaintiff suit was dismissed for want of prosecution vide order dated 22.03.2018. The Trial Court found that the respondent/plaintiff is protracting the matter and he is very casual in prosecuting the same. Being aggrieved, respondent submitted Civil Misc. Application No. 440/2018 on 20.04.2018 under Order IX Rule 9 of the Code of Civil Procedure. It is contested by the applicant. By the impugned order, application is allowed and suit is restored.

4. Learned counsel Mr. Barde submits that the respondent is very casual in prosecuting the suit and has protracted the proceedings. It is submitted that the grounds mentioned in the application for restoration are palpably false and inconsistent. The ground of illness was pressed into service in the application which is deviated by contending that he was required to move out of station on 23.02.2018. It is submitted that the application for restoration is silent regarding medical certificate or the entry in the service book, which shows that concocted reasons have been assigned for restoration of the suit. It is further submitted that medical certificate issued on 20.04.2018 is vulnerable.

5. Per contra, learned counsel Mr. Bajaj supports the impugned order. It is submitted that the stakes are involved in the matter and due to the illness his client was unable to remain present and prosecute the matter. It is further submitted that the aberrations here and there would not be fatal for the claim of the respondent. It is further submitted that application for restoration was submitted promptly without there being any delay. It is further contended that the entries in the service book is a corroborative evidence and the medical certificate was rightly issued after undergoing the ailment.

6. I have considered the rival submissions of the parties. The substantive rights are involved in the suit for specific performance of contract. The issues have also been settled in the matter and suit is at the stage of recording of evidence. Suit was dismissed for want of prosecution on 22.03.2018 and immediately application for restoration was filed within limitation.

7. The grounds stated in the application for restoration and the submissions made by the respondent before the Trial Court are inconsistent. The illness of the respondent was pressed into service. For that purpose medical certificate was also produced on record. I have gone through the

cross-examination and the observations of the Trial Court in the impugned order. I am of the considered view that no *mala fides* can be attributed to the respondent. All grounds were not mentioned in the application for restoration but that cannot be said to be fatal. No dishonesty per se can be inferred from the conduct of the respondent. I find that the Trial Court has taken a reasonable and plausible view. No case is made out to cause any interference in the impugned order.

8. Learned counsel Mr. Bajaj has ensured this Court that his client will cooperate with the expeditious disposal of the suit. In the impugned order, no specific condition is imposed by the Trial Court. The civil suit is ready for hearing. The respondent/plaintiff is expected to cooperate with the trial court and the restoration of the suit needs to be upheld on such condition. I, therefore, pass following order:

ORDER

Civil Revision Application is disposed of by confirming the impugned order on condition that the respondent/plaintiff shall cooperate the Trial Court for expeditious disposal of the suit. Any lapses on his part shall entail the consequences of Order 39 Rule 11 (Local amendment) of C.P.C.

(SHAILESH P. BRAHME, J.)

mkd/-