



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

951 WRIT PETITION NO. 7942 OF 2024

RAJESH GOPICHAND JHAMNANI LULLA AND OTHERS

VERSUS

ARIF FIROZUDDIN BAASIT AND OTHERS

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Mr. Shriram V. Deshmukh h/f. Mr. Devang R. Deshmukh, Advocate for the Petitioners

Mr. Navin Shah i/b. Mr. Naseer Shaikh, Advocate for Respondent No.1

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CORAM : AJIT B. KADETHANKAR, J.

DATE : 07.04.2026

PER COURT :-

. The Special Civil Suit No. 106 of 2022 filed by the petitioners in the Court of the learned Civil Judge, Senior Division, Bhusawal, came to be dismissed against defendant Nos.4 to 21 on account of the plaintiffs' failure to take steps to serve them. This order was passed by the Trial Court on 12.12.2022. The petitioners thereafter filed an application at Exhibit-21 praying for recall of the said order of dismissal and for leave to take steps against the concerned defendants.

2. After hearing the parties, the Trial Court, by order dated 10.04.2024, rejected the said application observing in the last paragraph that the petitioners failed to advance any sufficient or proper reason explaining their failure to take steps.

3. Mr. Shriram V. Deshmukh h/f. Mr. Devang R. Deshmukh, learned counsel for the petitioners submitted that valuable rights of the plaintiffs/petitioners are involved in the suit. He submitted that the presence

of defendant Nos.4 to 21 is absolutely necessary for adjudication of the civil rights of the parties. He further submitted that the petitioners would be in a position to demonstrate before the Trial Court sufficient and proper reasons for their failure to take steps against the said defendants, if an opportunity is granted.

4. Mr. Navin Shah i/b. Mr. Naseer Shaikh, learned counsel for the respondent No.1, however, has strong objection to this argument. He submitted that the Trial Court has passed a reasoned order and rightly rejected the application. He further submitted that the Trial Court has observed that, in view of Order IX Rule 5 of Civil Procedure Code, the petitioners have remedy to file fresh suit against the concerned defendants. He, therefore, prayed for dismissal of the petition with exemplary costs.

5. I have heard the learned counsel for the parties at length. It appears that the suit came to be dismissed against defendant Nos. 4 to 21 due to the failure of the plaintiffs to take steps for effecting service upon them. The Trial Court rejected the application on the ground that the petitioners failed to make out sufficient and proper reasons. Considering the nature of the relief sought in the suit, it is possible that the said defendants may be necessary and proper parties for effective adjudication.

6. In view of this, I deem it appropriate to allow the present writ petition thereby granting one opportunity to the petitioners/plaintiffs to demonstrate before the Trial Court a case for recall the order of dismissal against the concerned defendants.

7. Hence, I pass following order :

ORDER

- a. The Writ Petition is allowed.
- b. The order dated 10.04.2024 passed by the learned 2nd Joint Civil Judge, Senior Division, Bhusawal in Special Civil Suit No.106 of 2022 is quashed and set aside.
- c. The petitioners are permitted to file a fresh application for recall of the order dated 12.12.2022 passed below Exhibit-1.
- d. If such application is filed, the Trial Court shall decide the same on its own merits without being influenced by this order.
- e. It is clarified that this Court has not expressed any opinion on the merits of the matter. In the circumstances, the petitioners shall deposit costs of Rs. 5,000/- in the Trial Court. Deposit of the said costs shall be a condition precedent for filing the application for recall of the order dated 12.12.2022.
- f. The Writ Petition stands disposed in above terms.

[AJIT B. KADETHANKAR, J.]