



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

WRIT PETITION NO.2414 OF 2024

Shrikant s/o Ranganath Shivankar Vs. Durvas s/o Nandlal Kapgate and Anr.

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Shri A.S. Kulkarni, Advocate for petitioner.
Shri H.S. Chitaley, Advocate for respondent no.1 (through VC)

CORAM : M.W. CHANDWANI, J.

DATE : 13.02.2026.

1. The petition challenges the order dated 12.03.2024 passed by the learned 6th Joint Civil Judge Senior Division, Nagpur in Miscellaneous Judicial Case No.503 of 2016 wherein, the application filed by respondent no.1 for restoration of suit bearing no. Special Civil Suit No.538/2015, which was dismissed in default of not adducing evidence on 05.01.2016, came to be allowed subject to payment of costs of ₹10,000/-.

2. The contention of the petitioner is that once order has been passed by the Court under Order XVII Rule 3 of the Code of Civil Procedure, 1908 (for short “CPC”) same Court cannot restore the suit under Order IX Rule 9 of the CPC. Another submission is that inspite of various opportunities respondent no.1 failed to adduce the evidence therefore, the Court has rightly dismissed the suit.

3. So far as the first submission of the petitioner is concerned, it appears from the order of dismissal of the suit

that the Court has assumed the absence of respondent no.1 and therefore dismissed the suit. Thus, the Court did not exercise the option of proceeding to decide the suit on merit with the evidence which was available on record and did not pass any order on merit of the suit. Therefore, the reliance of the counsel for the petitioner on Order XVII Rule 3A is misplaced.

4. Another submission of the petitioner is that no opportunity was given to the petitioner while restoring the suit. It appears that the evidence has been led by the respondent and the respondent was subjected to cross-examination of the petitioner and everything was available on record. Rather, the petitioner was also present there. The submission that only within three minutes hearing was concluded cannot be a ground to say that he was not given opportunity of hearing while deciding the restoration application.

5. Coming to the merit of the impugned order of restoration, no doubt respondent no.1 failed to adduce the evidence for some dates but record shows that respondent no.1 had engaged new counsel and an application for amendment was filed. It even appears that when it was informed to the Court that respondent no.1 has gone out for typing some application; the Court did not wait and dismissed the suit. After accepting the justification, trial Court has exercised the discretion of restoration of the suit

by imposing costs of ₹10,000/-. It is desirable that the matter should be heard on merits instead of non-suiting respondent no.1 on technical ground. The trial Court was justified in compensating the petitioner. No perversity is shown in the order of the trial Court. Rather, the trial Court was completely justified in restoring the suit on the premise that opportunity of hearing should be given to each party. Therefore, no interference is required in the order passed by the trial Court. The petition is devoid of merits and same stands **dismissed**.

(M.W. Chandwani, J.)

Wagh