



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

WRIT PETITION NO.3933 OF 2025

Nitin S/o. Naresh Raut Vs. Vaishali W/o. Kishor Manvatkar & Anr.

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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Mrs. Sonali Saware Gadhave, Advocate for the Petitioner.

Mr. C.A. Joshi, Advocate for Respondent No.1.

None for respondent No.2.

CORAM: PRAFULLA S. KHUBALKAR, J.

DATED : 06th APRIL, 2026

1. Heard learned counsel for the petitioner as well as the learned counsel for the respondent No.1.
2. Nobody appears for the respondent No.2, although served.
3. Petitioner's challenge is to the order dated 21.02.2024 in Special Civil Suit No.94/2021 and order dated 23.06.2025 in Misc. Civil Application No.608/2024 passed by the Trial Court whereby, the suit was dismissed-in-default and the application for restoration of the suit was rejected.
4. Petitioner is the original plaintiff who has filed the suit for specific performance of contract, in which the defendants appeared and contested the suit. At the stage of evidence, when the plaintiff sought an adjournment on account of his ill health, the Trial Court rejected the application and dismissed the suit for want of prosecution by an Order dated 21.02.2024. Thereafter, the plaintiff filed an application under Order IX Rule 4 and under Order IX Rule 9 of CPC for setting-aside the dismissal order, which also came to be rejected vide Order dated 23.06.2025. Both these orders are challenged by way of instant petition.

5. Learned counsel for the petitioner submits that the petitioner-plaintiff was diligently prosecuting the suit and was also personally present on 21.02.2024, when the suit came to be dismissed-in-default by an order passed by the Trial Court. It is submitted that the plaintiff had sought an adjournment on account of his ill-health, but, the same was not considered as it was not supported by any document showing his ill-health. She submits that the approach adopted by the Trial Court in rejecting the application is without considering the purport of provisions of the Order XVII Rule 3 of CPC and since, the plaintiff was personally present before the Trial Court, the suit ought not have been dismissed-in-default. In support of her submissions, she relies upon the judgment in the matter of *Manoj Kanti Sengupta Vs. Smt. Gita Sengupta and Another* reported in *AIR 2006 Gauhati 10 Gauhati High Court*.

6. The petition is opposed by the respondent No.1/ original defendant, who submits that the plaintiff was not at all diligent in prosecuting the suit and he even failed to lead evidence in the restoration application to establish the reasons of his ill-health.

7. Having regard to the controversy involved, it is seen that the impugned orders were passed by the Trial Court by observing that the plaintiff failed to place on record any document in support of his ill-health. Even while considering the application for restoration, the Trial Court has observed that the plaintiff failed to examine the doctor or place on record any register maintained by the doctor (i.e. record of patients visiting him). On this count, the application for restoration was also rejected. It has to be noted that the plaintiff was personally present in the Court on 21.02.2024 and had sought for an adjournment, which indicates that the plaintiff was interested in prosecuting the suit, however, only

because of his failure to file a document in respect of his ill-health, the suit came to be dismissed-in-default.

8. Although, learned counsel for the respondent No.1 has pointed out that the plaintiff was not diligent in prosecuting the suit earlier, it has to be noted that the dismissal of the suit in default despite the presence of the plaintiff amounts to denial of justice. Only for failure to examine the doctor or to file any register maintained by the doctors, the rejection of application for restoration also shows a pedantic approach. The interest of justice demands that an opportunity needs to be afforded to the plaintiff to lead evidence and prosecute the suit on merits.

9. It is desirable that the suit is decided on merits. The original plaintiff has filed the suit for specific performance of contract and has also prosecuted it at several stages. The plaintiff now desires to prosecute the suit on merits and therefore, the suit needs to be restored.

10. At the same time, it has also to be noted that the defendant has been diligently prosecuting the suit and in case the suit is restored, he would be put to some hardship and inconvenience and therefore, the same needs to be compensated.

11. In view of this, the writ petition is **allowed** in the following terms:-

ORDER

i) Order dated 21.02.2024 in Special Civil Suit No.94/2021 and order dated 23.06.2025 in Misc. Civil Application No.608/2024 passed by the Trial Court are quashed and set-aside.

ii) The Misc. Civil Application No.608/2024 filed by the petitioner-plaintiff seeking restoration of the plaint is

allowed subject to cost of **Rs.7,500/- (Rupees Seven Thousand Five Hundred Only)** to be paid by the petitioner-plaintiff to **respondent No.1-defendant** before the Trial Court, within a period of three weeks from today.

iii) After the amount is deposited, the civil suit filed by the plaintiff be restored.

iv) Accordingly, the writ petition is **disposed of**.

(PRAFULLA S. KHUBALKAR, J.)

Privel