



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

WRIT PETITION NO. 4775 OF 2025

Shila Prakash Babhulkar, Aged 52 years, Occ: Housewife,
Vidarbha Housing Society, Near Sanskrutik Bhavan,
Yavatmal, Taluka District Yavatmal – 445001.

PETITIONER

VERSUS

Anandrao Ramrao Mahindre, through his next friend
Sumitra Anandrao Mahindre, Aged: 60 years, Occ:
Agriculturist, R/o Vithala, Tq. Digras, Dist. Yavatmal.

RESPONDENT

Shri M.U. Dastane, counsel for the petitioner.
Shri S.G. Varshani, counsel for the respondent.

CORAM : PRAFULLA S. KHUBALKAR, J.

DATE : MARCH 05, 2026

ORAL JUDGMENT

RULE. Rule made returnable forthwith. Heard finally with consent of the learned counsel for the parties.

2. By this petition, the petitioner has challenged the orders dated 06.07.2022 and 31.01.2025 passed by the trial Court in Civil M.A. no.29 of 2020 filed by the respondent.

3. The controversy in the instant petition arises out of an order passed in the proceedings of restoration of Regular Civil Suit no.39 of 2018 on account of rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short, 'the Code') for payment of deficit Court fees. In the proceedings for restoration of the suit, the defendant had filed an application at Exhibit 12 for dismissal of the restoration application which came to be rejected by the order dated 06.07.2022 and the application at Exhibit 20 for review of the said order was also rejected by order dated 31.01.2025, which are subjected to challenge by way of instant petition.

4. Shri M.U. Dastane, learned counsel for the petitioner submitted that the application for restoration of the suit deserved to be dismissed since the order passed under Order VII Rule 11 of the Code amounts to a decree and the proper remedy was to file a regular civil appeal under Section 96 of the Code. He submitted that the reliance placed by the trial Court while rejecting both the applications on the judgment of the Aurangabad Bench of this Court in ***Mohd.Haroon Mohd. Haneef & Others Versus Mohd. Yunus Mohd. Haneef*** [Writ Petition no.4831 of 2015] is misplaced as the said judgment was decided in a different set of facts, since the order passed therein was under Order VII Rule 11(f) of the Code.

5. As against this, Shri S.G. Varshani, learned counsel for the respondent opposed the petition and supported the impugned order. He submitted that the applications for dismissal of the proceedings are rightly rejected by the trial Court as there is no express bar to entertain the application for restoration of the suit, by exercising powers under Section 151 of the Code. By placing reliance on the judgment in ***Mohd.Haroon Mohd.Haneef & Others*** (supra), he submitted that the controversy in the instant matter is squarely covered by the said decision and thus the impugned orders are justified.

6. It has to be noted that the petitioner has filed the applications for dismissal of the proceedings of restoration of the suit. The trial Court has passed the impugned orders by relying upon the position of law as laid down in ***Mohd.Haroon Mohd.Haneef & Others*** (supra). In view of the overall factual aspects involved before it, the trial Court has inferred that the proceedings for restoration of the suit were required to be entertained

under Section 151 of the Code. It has to be noted that the controversy involved in the instant petition is covered by the judgment in ***Mohd.Haroon Mohd.Haneef & Others*** (supra) in which identical controversy about proceedings of restoration of plaint was under consideration before the Court. While entertaining the similar controversy, this Court has observed that by considering the hardship that the litigating parties would suffer, if they are relegated to an alternate remedy of filing of an appeal, the ends of justice would be defeated. Considering the overall factual and legal aspects, it has been observed that the exercise of jurisdiction of the trial Court under Section 151 of the Code for the restoration of the suit cannot be termed to be perverse or causing any injustice to the defendants. These observations are recorded by considering the judgments of the Hon'ble Supreme Court in ***Syed Yakoob Versus K.S. Radhakrishnan*** [AIR 1964 SC 477] and ***Surya Dev Rai Versus Ram Chander Rai*** [AIR 2003 SC 3044].

7. As such, in view of the position of law as laid down in the aforesaid judgments, the contentions of the petitioner about maintainability of proceedings on account of an alternate remedy of filing an appeal under Section 96 of the Code, stands answered. Further, the reliance placed by the counsel for the respondent on the judgment of the Principal Seat of this Court in ***Bhavana Kirit Vora & Others Versus Kushal Surendra Shah & Others*** [(2019 6 BCR 215)] appears to be appropriate in which it is categorically held that availability of a remedy of appeal against an order of rejection of plaint does not preclude an application under Section 151 of the Code.

8. After giving anxious consideration to the factual and legal aspects and a perusal of the impugned orders reveals that the trial Court has passed the impugned order by considering all the relevant factual and legal aspects. Both the impugned orders reveal sound reasoning based on the position of law showing no perversity warranting interference under Article 227 of the Constitution of India. The writ petition is accordingly dismissed with no order as to costs. Rule stands discharged.

(PRAFULLA S. KHUBALKAR, J.)