

**ORDER BELOW EXH.1 IN CIVIL MISCELLANEOUS APPLICATION
NO.143/2023**

**(Kakashaeb Tatoba Shinde and Ors Vs. Shri. Upendra Raghunath
Ranade and Ors)**

(CNR NO.MHSN02-001254-2023)

This is an application filed by the applicants (original plaintiffs, herein after referred as plaintiffs) seeking restoration of Special Civil Suit No.79/2019 which was dismissed in default for want of evidence.

FACTS IN THE APPLICATION

2. It is contended that the plaintiffs have filed suit bearing Special Civil Suit No.79/19 against the defendants, prying that the sale deed dated 08.08.2016 should be declared illegal and void, and that the sale deed of defendant No.5 to 39 should be declared illegal and not binding on the plaintiffs. Here, the suit property Gat No.344 admeasuring 1 H. 37 R., on the eastern side of the 0.26 R property and the R.C.C. house in it, was declared to be the property of the plaintiffs and alternatively for possession. In that regard, the defendants were not allowed to transfer the property of the plaintiffs against the defendants at Exh.5. The court had passed an temporary injunction against the defendants. Civil Appeal was filed against that decision and the appeal was sent for application Exh.5 re-inquiry. After application Exh.5 came for re-inquiry, the plaintiffs had taken the original suit for hearing, requesting that application Exh.5 be decided along-with the original suit for immediate execution.

3. Plaintiffs further contended that in the original suit, the defendants had objected to the court fees paid by the plaintiffs while filing the suit. The plaintiffs had paid the court fees as per the court order and Thereafter, the defendants again filed an application regarding the court fees and the proceeding remained pending. The plaintiffs have never been negligent in taking steps. The issues have been framed on 21.06.2022 in original suit. Thereafter, about nine dates were held till 16.06.2023. However, the plaintiffs could not appear on two of them. The plaintiffs had filed adjournment application at Exh.116 to 118 for filing evidence affidavit. The Ld. Advocate for plaintiffs had gone to America from 6th May to 15th June. On 16.06.2023, the affidavit was prepared by the Advocate of the plaintiffs to be filed on behalf of the plaintiffs. He had gone to out of station to attend one family for the wedding arrangement for their daughter. They could not contact their Advocate. Therefore, even though the plaintiff's affidavit is ready, it could not be filed. The plaintiffs have always tried to proceed with the suit as soon as possible by appearing in the court. The plaintiffs have not deliberately delayed in filing evidence. However, due to non having contact with the plaintiffs, the plaintiff's Advocate could not file adjournment application. In view of the above facts, it is necessary in the interest of justice to restore the original suit bearing Special Civil Suit No.79/2019. If the original suit is not restored, the plaintiffs will suffer irreparable loss. If the original suit is restored, the defendants will not suffer any loss. Hence, the application.

FACTS IN THE SAY

4. Defendants filed their say at Exh.25 and strongly objected the application. It is contended that the contentions made in the application are not accepted to them. The interim injunction application at Exh.5 allowed by giving the wrong impression that the summons of the suit were served to the defendant No.5 even though they were not served as per the law. From the beginning, the plaintiffs conduct was not honest. The plaintiffs were trying from the beginning to delay the proceeding of suit by doing something. The plaintiff's Advocate had gone to America from May 6th to 15th June (during which the Civil Court is on vacation), and the reason given in this application shows that the plaintiffs are giving false reasons for their absence from the court. The first date after the issues were framed on 21.06.2022 was 13.08.2022. It is required that plaintiff was filed his evidence affidavit. Then the date was 07.10.2022. The plaintiff did not file evidence affidavit on that day. On both the above dates, the court was busy with other work and did not even filed any adjournment application. On the next date, i.e. on 01.12.2022 filed adjournment application. Further, on 12.01.2023, the plaintiffs again obtained adjournment without filing an application, taking advantage of the fact that the court was on leave. Even though the court was on leave, the charge is with another court. On 14.02.2023, the plaintiffs also sought time. Since sufficient time had been given and 4 years had passed since the suit was filed, the court accepted the plaintiffs application subject to payment of Rs.100/-, but the plaintiffs again did not file

evidence affidavit on next date. On 05.04.2023, plaintiffs and their Advocate remained absent. However, in the interest of justice, the court did not dismiss the suit and granted the next date. Without taking any lessons from that, the plaintiffs again filed an application for adjournment on 02.05.2023.

5. Defendants further contended that on 16.06.2023, the plaintiffs and their Advocate remained absent. Therefore, the court dismissed the suit after considering all the history. Since the plaintiffs were not getting a proper response from the point of view of pursuing the suit, they should also have remained absent. Otherwise, they would have made arrangements to file the application through their assistant. The plaintiff's inability to contact their lawyer on 16.06.2023 is completely unbelievable. The plaintiffs and their Advocate have mobile phones. They can be contacted in a moment. Appeal No.89/2019 against the order at Exh.5 was allowed. However, the plaintiffs were trying to take advantage of the order. Therefore, there was an attempt to delay the suit of the plaintiffs and as part of it, the applicant was trying to remain absent in one way or another and on the date. If the application is allowed, injustice will be done to the defendants. Hence, it is finally prayed to reject the application.

THE ARGUMENTS

6. I have heard, Ld. Advocate for plaintiffs and Ld. Advocates for defendants at length.

POINTS AND FINDINGS

7. Upon hearing, the following points arise for my consideration and I record my findings thereon as under for the reasons to follow :-

Sr.No.	Points	Findings
1.	Whether the plaintiffs prove that there was sufficient cause for non giving evidence affidavit, as alleged ?	..In the affirmative
2.	What order ?	As per final order

=REASONS=

AS TO POINT NO.1 AND 2 :-

8. Judiciary is respected not on account of its power to legalize injustice, on technical grounds but because it is capable of removing injustice and is expected to do so. The expression “sufficient cause” employed in Order IX, Rule 9 and Rule 13 of the Code of Civil Procedure, by the Legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner which subserve the ends of justice that being the life purpose for the existence of the institution of Courts.

9. It is well settled that “*sufficient cause*” so as to construed liberally so as to advance the cause of justice and not the cause of technicalities. A case should be decided on merits and a party should not be deprived of his rights to get the case examined on merit. The principles as that hyper-technical, pedantic and unpragmatic view should not be taken while deciding the question

of sufficient cause in matters of restoration of suit dismissed for default for want of evidence or for other reasons. Refusing to restore as such the suit can result in a meritorious matter being thrown at the very threshold and cause of justice being defeated. As against this when the suit is restored the highest that can happen is that a cause would be decided on merits after hearing the parties.

Keeping in mind this well settled principles in law I proceed.

10. The plaintiffs have filed Special Civil Suit No.79/2019 for the reliefs of declaration, perpetual injunction and possession, it means valuable civil right was involved in Special Civil Suit No.79/2019 of the plaintiffs. The plaintiff No.1 Kakaso Shinde has filed affidavit in support of their application at Exh.44 reiterating the contents in the application. His cross examination demonstrates that since framing of the issues on 21.06.2022, till completion of 10 dates of case, no effective steps by plaintiffs were taken. Admittedly, for some dates they are absent. It is appeared on record that for want of the evidence to be filed by plaintiffs, suit was dismissed. The core reasons assigned by plaintiffs for taking non steps is absence of Ld. Advocate and they were planed to attend one family for marriage arrangement of their daughter. Admittedly no documentary evidence regarding same and evidence of unable to contact to advocate's mobile is brought on record. Perusal of entire cross examination of said witness, it has appeared on record

that despite sufficient opportunity available, plaintiffs failed to take effective steps. The line of the cross examination of said witness sufficiently demonstrated that there was default on the part of plaintiffs to approach court for taking further steps. It has been rightly brought to the notice of this court by Ld. Advocate for defendants that affidavit in lieu-of-chief-examination could have been filed on record even though court was on leave. It is needless to mention here that filing of any application or affidavit in lieu-of-chief-examination when presiding officer is on leave can be done by remaining present before court having charge of original court. The reasons assigned by plaintiffs on record can not be squarely ignored only because of some default on the parties or their respective advocate. Rejection of this application on the basis of said factual aspect would be too hyper-technical, pedantic and unpragmatic approach. Once above default on the part of plaintiffs would have been regularized by imposing costs on them, then rejection of this application would cause injustice to the parties. If the application is allowed definitely dispute between parties can be resolved on merit. Otherwise the parties would suffer irreparable loss being intermingled in technicalities. The court should be liberal while deciding such application by taking into consideration the settled law that justice seen to be done.

11. Further, I have gone through oral as well as documentary evidence on record. Also, the authority **Nandkishor Damodhar Wadgaonkar Vs. Gajanan Uttamrao Pedhe, decided on 14.08.2013**. As per said authority, the plaintiffs were expected to

explain the entire delay caused for taking steps. In this regard, the court has gone through entire record and which is sufficiently assessed by this court. This authority is also regarding 'sufficient cause'. It is observed that while considering sufficient cause, court should exercise discretion in a judicious manner and when the court refers to the term 'in the interest of justice', it means justice to both side and not only to one side. Above settled proposition of law has been taken into consideration by giving justice to both side by allowing the present application by imposing reasonable costs on the defaulting party.

12. Further, I have no sufficient reason to disbelieve the reasons given in the application. The defendants have not filed counter affidavit denying the contents in the affidavit, Exh.44. Therefore, relying on the principles discussed supra, I am of the considered view that the reasons given by the plaintiffs are sufficient to restore the suit, Special Civil Suit No.79/2019. Further, this application happens to be well within limitation as per **Article 122** of Limitations Act.

13. However, it was the bounden duty of the plaintiffs to remain present when the suit was called for hearing, for at least to inform their Ld. Advocate to take necessary steps by seeking adjournment etc. This was not done by the plaintiffs, therefore, the defendants have unnecessarily suffered. In these facts the defendants needs to be compensated by awarding suitable costs,

which I assess at Rs.2,000/- and accordingly answer point No.1, in the affirmative and for point No.2, I proceed to pass the following order.

=ORDER=

1. The application is allowed subject to cost of Rs.2,000/- (Rs. Two Thousand Only) payable to other side.
2. The Special Civil Suit No.79/2019 be restored to its original stage at the time of dismissal i.e.16.06.2023, after paying the costs, as ordered.
3. Parties to take note that next hearing date of restored suit is 18.08.2026.
4. Interim reliefs if any are restored.

(Pronounced in Open Court)

Sangli
Date : 01.08.2026

(Sunil B. Mane)
Vth Joint Civil Judge Senior Division,
Sangli

-CERTIFICATE-

I affirm that the contents of this PD.F file judgment/order are same, word to word, as per the original judgment/order.

Name of Stenographer	:-	Sachin B. Yadav, Stenographer-II
Name of Court	:-	V th Joint Civil Judge (S.D.), Sangli
Date of decision/typed	:-	01.08.2026
Judgment/order signed by the P.O. on	:-	01.08.2026
Judgment/order uploaded on	:-	01.08.2026