

ORDER EBLow EXH-28 IN REGULAR CIVIL SUIT NO.24/2013

This is an application by the plaintiff to set aside order of dismissal of the suit against defendant Nos.3 and 6.

The application, in brief, is as under :-

02. The suit is for perpetual injunction and for fixation of four boundaries of the suit property. As the plaintiff failed to take steps against defendant Nos.3 and 6, the suit came to be dismissed against them on 17.08.2013. The plaintiff is sugarcane cutting labours and are out station for their livelihood. Therefore, the plaintiff failed to take steps against above said defendants. Said defendants are necessary parties to the suit to decide it at once and on merit. Hence, the plaintiff prayed to set aside order of dismissal of the suit against defendant Nos.3 and 6.

03. The defendants filed say at Exh-30 and strongly contested the application. According to the defendants, the application is filed belatedly. No reason or grounds mentioned for failure to file the application within the time. Hence, claimed rejection of the application.

04. Perusal of roznama goes to show that summons to defendant Nos.3 and 6 returned unserved on 21.02.2013. On next date, in spite of taking steps against said defendants on new address, the plaintiff filed application for service of summons to said defendants on same address. The application is came to be granted by Ld. Predecessor of this court. Then, on 04.05.2013, summons to said defendants again returned unserved. Therefore, the suit was

fixed on 03.07.2013 for steps against defendant Nos.3 and 6. But, the plaintiff has not taken any steps against said defendants. Further on 26.07.2013, the plaintiff failed to take steps and accordingly, the suit is fixed for dismissal order against defendant Nos.3 and 6. On next date of 17.08.2013, the plaintiff has not taken any of the steps and resultantly, suit came to be dismissed against defendant Nos.3 and 6. Hence, whole of the record goes to show that the plaintiff failed to take steps against defendant Nos.3 and 6 from time to time and in spite of sufficient opportunities. The reason mentioned in the application that the plaintiff is at out station for livelihood is not at all considerable and especially because, the application is not under signature of the plaintiff or nor supported by his affidavit.

05. In backdrop of above stated facts, provision of Order-IX, Rule-5 (2) of the Code of Civil Procedure reads that the plaintiff may bring a fresh suit on dismissal of the suit against the defendants. In circumstances, there being specific provision for filing fresh suit against the defendants, the application is not legally tenable for invoking powers under Section-151 of the Code of Civil Procedure. In this regard I would like to rely on **Vishwanath Satavaji Gaikwad Vs. Laxman Abaji Kavale (A.I.R. 2000 Bom. 307)**, wherein the Hon'ble Lordship held that, "The provisions of Order-IX Rule-5, sub Rule-1 and 2 prohibits the court from exercising inherent jurisdiction. Remedy is provided under Sub Rule-2 to file fresh suit in case of dismissal of the suit by the court. Hence, there is implied prohibition against the use of inherent jurisdiction of the Court." Hence, in view of cited ratio, the plaintiff can file fresh suit against defendant Nos.3

and 6. Resultantly, the application will have to be rejected. Hence, the order.

ORDER

The application is rejected.

Date : 05.08.2014

Place : Shevgaon

(P. S. Shinde)

Jt. Civil Judge J.D., Shevgaon.