

MHBI010020002025



Civil Misc. Application No.192/2025
Trimbak Vs. Vajjaintabai & Anr.

ORDER BELOW EXH.1

Present application is filed by applicant/original appellant to set aside order passed below Exh.1 in RCA No.11/2023 Trimbak Vs. Vajjaintabai & Anr. dated 10.04.2025 and to restore the appeal dismissed in default on aforesaid date to its original position.

02. Petitioner averred that aforesaid civil appeal was preferred by him against judgment and decree passed in RCS No.4632/2014 dated 01.12.2022 passed by learned 4th Civil Judge Junior Division, Beed Dist.Beed and prayed for decree of declaration of ownership and perpetual injunction. It was lastly fixed for hearing on 10.04.2025. On that day, it was called for hearing, however petitioners and their advocates were found to be absent. Therefore, appeal was dismissed in default.

03. Petitioner further submit that appellant is a too age old person. Since, February-2025 he was suffering from various diseases due to old age. He was advised for complete rest by the physician. His Advocate was also engaged in another Court. Therefore could not attend the said matter. Said matter is related to the immovable property and valuable rights of applicant is involved. Said application is filed within limitation. Applicant is

not negligent or careless. In the interest of justice, he prayed to restore the matter to its original position by allowing this application.

04. Respondent Nos.1 and 2 resisted the application by filing their say at Exh.10 and contended that after preparation of paper book so many dates were given to the appellant for argument but he failed argue and therefore order of the court is correct. Hence, prayed to reject the application.

05. Perused application. Heard both sides.

06. Following are the points for determination along-with my findings thereon are as under -

Sr.No.	POINTS	FINDINGS
1.	Whether applicants have shown sufficient cause for restoration of RCA No.11/2023 Trimbak vs. Vajjantabai dismissed in default dated 10.04.2025 ?	Yes.
2.	What order?	: Application is allowed.

REASONS

POINTS NO.1 & 2 :-

07. In support of application, applicant has filed his

affidavit at Exh.5 wherein on oath he deposed as per his application. He has also filed certified copy of Exh.1 RCA No.11/2023.

08. In the present case on perusal of copy of RCA No.11/2023 at **Exh.12** it is seen that since 03.05.2024 appeal was posted for argument but appellant did not argued the same and therefore it was dismissed in default.

09. Though this is so it is seen that since long the appeal was pending for hearing. The applicant has stated reason of his illness and engagement of advocate in other court. However, he has not filed documents of his illness or treatment. The petitioner in his main application averred that he was advised to take rest and also filed affidavit in support of his averments. Therefore for said genuine reason he could not remain present before the Court when called for hearing. Similarly Advocate was also busy in another Court. Though Advocate engaged in other Court is no ground. However, due to illness applicant was absent before the Court.

10. No doubt the appeal was quite old one and since 2024 it was posted for hearing and at the same time it cannot be ignored that the dispute is in respect of landed property, wherein civil right of parties are involved.

11. Neither party has filed copy of Roznama of Regular Civil Appeal. Therefore, inference as to due to whom, said appeal is prolonged, cannot be drawn. Though this is so, one thing is clear that the original suit was in respect of immovable property and for declaration of ownership.

12. Under such circumstances, it is necessary to grant an opportunity to the petitioner to raise his grievance against the judgment and decree of original civil suit before it's higher forum i.e. appellate Court. No prejudice would cause to the respondents as they both can argue on the merits of the appeal before the Court.

13. Therefore, considering the nature of the proceeding, in my opinion, this is a fit case wherein order of dismissal of the

Regular Civil Appeal in default dated 10.04.2025 can be set aside.

Hence, I answer aforesaid point No.1 in the Affirmative.

14. However, it is also seen that since long the appeal was pending for hearing. Though on the date of hearing applicant was ill, however, he has not assigned any reason as to why for such a huge delay of one year he has not argued before the appellate Court about the appeal on merit and therefore for such a huge delay on the part of applicant, it is necessary to impose some cost on the applicant. Hence, I pass the following order.

ORDER

1. The application is allowed as follows ;
2. The order passed in R.C.A. No.11/2023 Trimbak vs. Vajantabai below Exh.1 dated 10.04.2025 by learned District Judge-3, Beed is hereby set aside subject to cost of Rs.5000/-. Out of it Rs.2500/- be paid to the Government and remaining amount of Rs.2500/- be paid to the respondent Nos.1 to 2 and on or before 20.06.2026.
3. On failure of the payment, this application will be deemed to be rejected.

4. After depositing the cost, original appeal bearing No.R.C.A. No.11/2023 Trimbak vs. Vajantabai be restored to its original position.
5. Concern clerk and Superintendent to comply.
6. Proceeding closed.

Date : 28.04.2026

(Renuka M. Satav)
Member, MACT, Beed.

CERTIFICATE

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

Name of Stenographer	--	R.M.Naik, Stenographer (Grade-III)
Dictated On	--	28.04.2026
Typed On	--	28.04.2026
Order signed by the Presiding Officer on	--	28.04.2026