

MHJN040021902022



Civil M.A.No.133/2022  
Nivruti & Ors. Vs.  
Shashikalabai & Ors.

**ORDER BELOW EXH.1**

(Date 16 March, 2016)

Peruse the applicant and say filed the non-applicant no.3. Heard the Ld. Adv. for both side.

02. This is an application for restoration of the suit bearing R.C.S.No. 221/2013. According to the applicant, he had filed suit for declaration and permanent injunction. The said suit was pending for the appearance of legal heirs of defendants. However, on 03.09.2022 applicant as well as his advocate are absent. Therefore, suit is dismissed for want of prosecution on the same day. According to the applicant, on 03.09.2022 the applicant was suffering from typhoid . Therefore, he could not remain present on the same day. Therefore, the applicant has filed for restoration of suit.

03. The said application is opposed by the non-applicant no.3 by filing his say overleaf to this application. It is contended by the non-applicant that, with intention to cause delay this application filed by applicant. Therefore, the non-applicant no.3 has prayed to reject the application. The non-applicant no.2 failed to appear inspite of notice in paper publication. Thus, this application proceed ex-parte against him.

04. Heard the advocate for both side at length and perused the record. Admittedly, record goes to show that, the suit was dismissed for want of prosecution on 03.09.2022. The Court has observed that for want of the effective step by the plaintiff suit dismissed. The applicant has placed on record the certificate dated 26/11/2025 which goes to show that, the applicant was under his treatment from 29/08/2022 to 06/09/2022 and he was bed rest due to suffering of viral fever. Considering the reason mentioned in the certificate, it

seems that, the applicant was suffering from illness. Therefore, due to his illness, he was unable to present before the Court. However, as per the principles of natural justice, no one should be condemned of being unheard. Therefore, I am inclined to allow the application for restore the suit its original position subject to costs which is quantified at Rs. 1000/-. Hence, I pass the following order :-

**ORDER**

- (i) Application is allowed with costs of Rs. 1000/-.
- (ii) The order dated 03.09.2022 is hereby set aside and the suit bearing No. 221/2013 is restored to its original position.
- (iii) The applicant is directed to pay the costs of Rs. 1000/- to the non-applicant no.3 within a period of 4 weeks from today.
- (iv) Record and proceeding be called.
- (v) Issue notice to the applicant as well as non-applicants returnable on 02/04/2026.
- (vi) The proceeding is disposed of as indicated above.

Date 16.03.2026

( S. H. Rathi )  
2<sup>nd</sup> Jt. Civil Judge JD, Ambad.