

MHRG140011032016



Civil M. A. No.288 of 2016

Order Below Exhibit 1

Ravindra Vitthal Kadu Vs. Sitabai Dhanaji Patil and others

1. This is an application for restoration of R.C.S. No. 109 of 2011 which was dismissed on 17.11.2016. The application is supported by an affidavit (Exh.5) by applicant.
2. Non applicant no. 1 to 5 have submitted that, the application is legally defective as it does not specify under which provision of the Civil Procedure Code it has been filed, and therefore it cannot be entertained by the Court. According to the non-applicants, the reasons stated by the applicant for restoration of the suit are neither valid nor lawful. Despite repeated calls, neither the applicant nor his advocate remained present, due to which the suit was rightly dismissed for default. Therefore, the applicant's application be dismissed with costs.
3. The case proceeded exparte against non applicant no. 6 to 9 vide order dated 25.07.2024.
4. The non-applicant No. 10 has submitted that no sufficient or bona fide cause has been shown for the applicant's absence on the date

of dismissal, which occurred due to the applicant's gross negligence. Hence, the present application is not maintainable in law and deserves to be dismissed in its entirety.

5. I have perused the application and say there on. I have also perused certified copy of the plaint of R.C.S. No. 109 of 2011 and order thereon.

6. It is contended in the application that the applicant, who is the original plaintiff, had filed Regular Civil Suit No. 109/2011 seeking a declaration and related reliefs. The suit was dismissed for default on 17.11.2016 due to non-prosecution. The applicant has filed the present application to set aside that order and to restore the suit. It has been submitted that the suit had been pending for five years, during which the applicant regularly attended proceedings. The matter was fixed for evidence, but due to the possibility of settlement and unavoidable circumstances—specifically, the applicant's advocate being unavailable due to delivery—the applicant and advocate remained absent on the relevant dates, leading to dismissal of the suit.

7. The applicant claims a 1/2 share in the suit property acquired by J.N.P.T. and asserts that dismissal without adjudication would cause irreparable loss, as the suit is the only remedy available. The application has been filed within the limitation period, with requisite court fees paid. The applicant therefore prays for restoration of the suit and for any other just and equitable relief.

8. The applicant has also filed supporting affidavit. His evidence is intact. There were sufficient and satisfactory reasons for non-appearance to the applicant as well as their learned advocate on the date of hearing of the suit.

9. In such circumstances, in the interest of justice application of the applicant deserves to be allowed subject to imposing reasonable costs on the applicant. Hence, I proceed to pass the following order:

::ORDER::

1. The application is hereby allowed, subject to costs of Rs.2000/- to be payable to the non-applicants.
2. The suit bearing R.C.S.No. 109 of 2011 is hereby restored to its original stage, number and position vide Order 9 rule 4 of C.P.C

Sd/-

Date :-09.01.2026
Place :-Uran.

(Ms. G.K.R. Tandon)
2nd Jt CJJD and JMFC,
Uran-Raigad