

MHYA070003272018 	Presented on	:-	07/02/2018		
	Registered on	:-	07/02/2018		
	Decided on	:-	04/05/2026		
	Duration	:-	Y.	M.	D.
			08	02	27

**IN THE COURT OF JT. CIVIL JUDGE, JUNIOR DIVISION, DARWHA,
DIST. YAVATMAL.**

(Presided over by Smt. Dr. S.V. Rajkuntwar)

(Date on 04/05/2026)

Civil M. A. No.12/2018

Exh. No.41

1.	Ramchandra Kisan Manekar, Age:- 51, Occu.:- Agriculturist, R/o. Bodegaon, Tq. Darwha, Dist. Yavatmal.	<u>APPLICANT</u>
<u>VERSUS</u>		
1.	Tarzan Ashok Thakre, Age:- 30, Occu.:- Agriculturist, R/o. Bodegaon, Tq. Darwha, Dist.Yavatmal.	
2.	Ashok Kashiram Thakre, Age:- 58, Occu.:- Agriculturist, R/o. Bodegaon, Tq. Darwha, Dist. Yavatmal.	
3.	Wasudevrao Sukhdev Bajare, Age:- 65, Occu.:- Agriculturist, R/o. Mahuli, Tq. Darwha, Dist. Yavatmal	
4.	Babarao Sukhdev Bajare, (Dead) Through his heirs	

4 (A)	Smt. Vimlabai Babarao Bajare, Age:- 60, Occu.:- Agriculturist, R/o. Mahuli, Tq. Darwaha, Dist. Yavatmal	
4 (B)	Sachin Babarao Bajare, Age:- 35, Occu.:- Agriculturist, R/o. Mahuli, Tq. Darwaha, Dist. Yavatmal	
4 (C)	Smt. Varsha Arun Patil, Age:- 37, Occu.:- Agriculturist, R/o. Januna, Tq. Manora, Dist.Washim.	
4 (D)	Smt. Swati Satish Dhanorkar, Age:- 32, Occu.:- Housewife, R/o. Dhanora, Tq. Manora, Dist. Washim.	
4 (E)	Smt. Jotsna Bhaskar Chaudhari, Age:- 28, Occu.:- Housewife, R/o.Chincholi, Tq.Mangrulpir, Dist. Washim	
5.	Chabubai Mahadeorao Thakre, Age:- 55, Occu.:- Agriculturist, R/o. Dhamni, Tq. Manora, Dist. Washim	
6.	Dwarkabai Laxmanrao Bhoyar, Age:- 45, Occu.:- Agriculturist, R/o. Kovhada, Tq. Darwaha, Dist. Yavatmal.	<u>... NON- APPLICANTS</u>
ORDER IX, RULE 4 OF CODE OF CIVIL PROCEDURE FOR RESTORATION OF SUIT		
Advocate for applicants Shri. M. R. Chavhan Advocate for non-applicants Shri. S. A. Ballal		

-:: JUDGMENT ::-
(Delivered on 04/05/2026)

01. This is application for restoration of R.C.S. No. 76/2013.
02. The applicant contended that, he filed Civil Suit for specific performance of contract against the non-applicant. The suit was fixed for evidence. However, applicant was not feeling well so he could not attend the court. Thereafter, Court passed order of D.I.D. on Exh.1 on dated 04/01/2018. Thereafter, the applicant met with his advocate and got knowledge of the dismissal of suit. It is necessary to take the order against the non-applicant. So the applicant prayed to restore the suit.
03. The non-applicant no. 1 and 2 filed reply at Exh.24 and they submitted that, the disputed property does not belongs to the applicant. Applicant is giving false reason in the application. The applicants were absent on many dates which shows he lost his interest in the matter but he has interest to harass the non-applicant. If the applicant's application is allowed, it will again cause trouble for the non-applicants. Lastly, they prayed to reject the application. The advocate for non-applicant further submitted that, the original suit of the applicant, R.C.S. No.76/2013, was dismissed on 04/01/2018. Even after that, the applicant has not filed the present application within the legal period of 30 days, so the said application is filed after lapse of time. Lastly, he prayed to reject the application.
04. Heard both side at length. Considering available pleadings, record and arguments, the following points for determination arose and I recorded my findings thereon along with reasons :-

Sr. No.	POINTS	FINDINGS
1	Is there sufficient cause for non-appearance of applicant and to restore the original suit that is R.C.S. no. 76/2013 adducing evidence on the fixed date ?	... Yes.
2	What order?	... As per final order.

REASONS**POINT NO. 1 :-**

05. The applicant adduced evidence of Ramchandra Kisan Manekar (A.W.-1) at Exh.32 and closed evidence by pursis at Exh.33. The applicant relied on the medical certificate (Article -A).

06. The fact of filing suit and its dismissal along with dates are not disputed. The reason of restoration of suit is in dispute. The learned advocate for applicant Shri. M. R. Chavhan submitted that, the reason was out of control of the applicant. It is sufficient to restore the suit. Lastly, he prayed to allow the application. The learned advocate for non-applicant Shri. S. A. Ballal submitted that, the reason is not satisfactory. He further submitted that, the applicant has not filed the present application within the legal period of 30 days, so the said application is out of time. Lastly, he prayed to reject the application.

07. Perused the record. The suit is dismissed in default on 04/01/2018 due to continuous absent of the plaintiff/applicant. The

date of dismissal and its reason is very material. Ramchandra (A.W.-1) deposed, he was admitted at hospital of Dr. Dongre on 02/01/2018 to 07/01/2018. The applicant's advocate had gone out of the town. Therefore he could not present in Court. Thereafter, he met with his counsel and got knowledge of the dismissal order. As per his evidence, the applicant/plaintiff was not regularly absent in that suit. But, his regular or continuous personal presence in the suit was not required. If counsel ready and agree to conduct the suit in absence of the plaintiff, then plaintiff presence is not required. Hence, regular absence of the applicant is immaterial.

08. The learned advocate has not sought material admission from the applicant. There are no circumstances to disbelieve or discard the evidence of applicant. His oral evidence as well as medical certificate (Article -A) are sufficient evidence to prove the fact of illness of the applicant. That reason was out of control of the applicant. It is not deliberateness. The applicant had not conveyed message of his absence to his counsel due to the medical reason. I found substance in the application and argument of the learned advocate Shri. M. R. Chavhan. Accordingly, reason of the applicant's absence on 04/01/2018 is satisfactory and sufficient to restore the suit and fresh trail.

09. The suit is in respect of valuable rights. There is needs to determine right of both parties on merits. Therefore, sufficient opportunity is required to prove his case. The reason of illness is having substance. Therefore, considering satisfactory and sufficient reason, the

suit can be restored by set-aside dismissal order under Order IX Rule 4 of the Code of Civil Procedure.

10. However, the non-applicants unnecessary faced this proceeding and expended money and valuable time. This can be ascertained and compensated in terms of money. The applicant is liable to pay cost of this proceeding. If the application is allowed, no harm or injury will cause to the non-applicants. Similarly, it may helpful to decide rights and liabilities of parties. The applicant succeeded to bring satisfactory, sufficient and convincing reason for his non-appearance on the date of dismissal. Hence, I answer point No. 1 in the affirmative.

POINT NO. 2 :-

11. As I discussed above and affirmative findings of the point no. 1, the applicant succeeded to establish his case and prove satisfactory and sufficient reason. He is also entitled to restore suit R.C.S. No. 76/2013 subject to cost, in view of Order IX Rule 4 of the Code of Civil Procedure. Hence, in answer to point No.2, I pass the following order.

:-: ORDER :-:

1.	The application is allowed and set-aside dismissal order dated 04/01/2018, subject to following terms.
2.	The applicant shall pay cost of Rs.2,000/- to each of the non-applicant (in all total Rs.12,000/- to all non-applicants) within one month from this order.

3.	After realization of payment of cost within stipulated period, R.C.S. No.76/2013, shall restore on its original stage and parties of the suit shall remain present in the court on 08/06/2026.
4.	The applicant shall proceed with the suit expeditiously and directed take note accordingly.

Date:- 04/05/2026

(Smt. Dr. S.V. Rajkuntwar)
Jt. Civil Judge Junior Division,
Darwha, Dist. Yavatmal.

CERTIFICATE

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

Name of Stenographer	Mr. Praful D. Rangari (Stenographer Grade 3)
Court Name	Smt. Dr. S. V. Rajkuntwar Jt. Civil Judge (Jr. Dn.), & Judicial Magistrate F. C., Darwha, Dist. Yavatmal
Date of Order/Judgment	04/05/2026
Order signed by P.O. on	04/05/2026
Order uploaded on	04/05/2026