

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

...
45 APEAL FROM ORDER NO. 125 OF 2013

SUNDARABAI DAGDU PATIL AND ANR
VERSUS
AMAR ALLEGED DAGDU PATIL AND ORS

...
Advocate for Appellants : Mr.Choudhary S. S.
Advocate for Respondent No.1: Mr. V. H. Sangole
Advocate for Respondents 3 and 4: Mr. G. V. Ptil
...

CORAM : S. V. GANGAPURWALA, J.

DATE : 14th September, 2015

PER COURT :

1. The suit of the present appellants came to be dismissed in default. The appellants filed an application for restoration alongwith an application for condonation of delay of 13 days. The application for condonation of delay is dismissed in default. Aggrieved thereby, the present appeal from order.

2. In the interregnum, the appellants had filed Misc. Appeal before the District court. The same is dismissed as not tenable.

3. Mr. Choudhari, the learned counsel for the appellants submits that in fact there was communication

gap between the advocate and the applicants-appellants and as such, the applicants could not remain present. The advocate of the applicants also did not attend the matter and the matter could not be prosecuted. In fact the applicants were to be communicated by their lawyer about the date of hearing, however as the Advocate also did not appear, the application for condonation of delay is rejected.

4. The learned counsel for the respondents submit that there is absolutely no ground for not appearing in the matter. Ample opportunity was given to the appellants, however, the appellants remained absent. The order is rightly passed.

5. I have considered the submissions.

6. It is trite that whenever technical considerations and cause for substantial justice are pitted against each other, the cause for substantial justice has to be subserved. The suit came to be dismissed in default. The restoration was filed alongwith an application for condonation of delay of 13 days. It

appears that Advocate of the applicants also remained absent and in absence of applicants and their advocate, the application was dismissed.

7. Considering the fact that the applicants are ladies, illiterate and as the advocate of the applicants remained absent, the litigant should not suffer because of the fault of the advocate, I am inclined to grant opportunity to the appellants however, the appellants also deserve to be mulct with costs. In the result, I pass the following order:

8. The order dated 10.01.2010 rejecting the application or condonation of delay for non prosecution is quashed and set aside and the Application M.A. No. 314 of 20109 is restored to its original position on condition that the applicants pay cost of Rs.5000/- to respondent no.1 within four weeks from today. Payment of cost is the condition precedent.

9. If the cost is not paid within the stipulated period, then the application M.A. No.314 of 2009 shall stand rejected. If the cost is paid within the time as

stipulated, then the Court shall decide M.A. No.314 of 2009 on its own merits.

10. The cost may be deposited before the Lower Court. In case the cost is deposited, the present respondent no.1 is entitled to withdraw the same.

(S. V. GANGAPURWALA, J.)

JPC