

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

APPEAL FROM ORDER NO.120 OF 2013

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders
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Mr.Patil Indrale Anand V., advocate for the appellants.
Mr.S.P.Katneshwarkar, advocate for Respondent Nos.1/1, 1/2, 1/3.
Mr.A.N.Gaddime, advocate for Respondent No.2.

CORAM : S.V.GANGAPURWALA, J.
Date : 26.08.2015.

PER COURT :

1. Heard.
2. The present Respondent Nos.1/1 to 1/3 have filed suit for possession and declaration. The same is decreed. Aggrieved thereby, the present appellants filed appeal before the District Court. The said appeal was dismissed for default U/o 41 Rule 17 of the C.P.C. On the very same day, it appears that the application was given for restoration/re-admission of appeal. The same was allowed subject to payment of cost of Rs.500/- (Rupees five hundred only). For more than a year, the cost is not paid. The present appellants filed Misc. Application No.32/2010 for re-admission of appeal. The Court rejected the said application.

3. Mr.Patil, learned counsel for the appellants submits that the appellants are the rustic persons and are doing agricultural labour work. Some of the applicants are minors. On the given date the advocate of the appellants was engaged in other Court, the person who was looking after the matter was also not feeling well, as such could not prosecute the matter. Due to oversight, the cost remained to be paid. The learned counsel submits that the right of the applicants in an immovable property is involved, the applicants be given opportunity to defend the appeal on merits.

4. Mr.Katneshwarkar, learned counsel for the original plaintiff and his L.Rs. submits that it is a case of gross negligence on the part of the appellants. The appellants are deliberately protracting the matter as they are in possession of the property and the suit of the present plaintiff is decreed. The District Judge has rightly considered the said aspect.

5. I have considered the submissions. It is true that the appeal involves right of parties in an immovable property. Decree of possession has been passed in favour of the present plaintiffs and against the present appellants. The appellants are required to be diligent in prosecuting the appeal. The appellants are negligent in prosecuting the appeal. Anyhow, considering the fact that it is a case of rights of the parties in an immovable property, I am inclined to take a liberal view, however, the appellants be mulct with cost.

6. In the result, I pass the following order :

- a) The impugned order is quashed and set aside. M.A.(R.J.E) No.32/2010 is allowed on condition that the applicants deposit cost of Rs.10,000/-(Rupees ten thousand) in addition to the cost of Rs.500/- (Rupees five hundred) which was awarded earlier on or before 22.9.2015. The payment of cost is condition precedent. In case the said cost is deposited, the District Court shall re-admit the appeal bearing No.1/2006. The District Court shall thereafter dispose of the appeal preferably within nine (9) months from the date of this order.
- b) The Appeal from Order is accordingly disposed of. No costs.

(S . V . GANGAPURWALA, J .)

Dt.26.08.2015.
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