

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION St. NO.21255 OF 2015**

Yamunabai Kashinath Jadhav

..Petitioner

Vs.

Ramchandra Dada Jadhav & Ors.

..Respondents

Mr. P. N. Joshi for the Petitioner

CORAM : R. M. SAVANT, J.

DATE : 9th SEPTEMBER, 2015

P.C.

1 The Writ Jurisdiction of this Court is invoked against the order dated 8-7-2015, passed by the Learned District Judge, Nashik, by which order, the Civil Application No.206 of 2012 for restoration of the Appeal came to be dismissed.

2 The Appeal was filed against the decree passed by the Trial Court i.e. the Learned Civil Judge Junior Division, Pimpalgaon, dated 1-1-1988, the said decree was one for partition and the Plaintiffs it seems were relying upon the Will executed on 31-7-1983 by the deceased Kashinath Jadhav who was the owner of the suit lands. The Petitioners herein are the original Defendants. The record discloses that the Appeal was initially filed in the District Court at Nashik, however in view of the District Court at Niphad being established, the Appeal came to be transferred to the Learned District Court at Niphad as the

subject matter of the Appeal within the territorial jurisdiction of the Learned District Judge presiding at Niphad.

3 It seems that the Appeal thereafter came to be transferred to the District Court at Nashik. It appears that the Appeal was ready for hearing on 1-1-2004 except that the Appellants were required to bring the heirs on record of the deceased parties. The said Appeal came to be adjourned to 7-9-2010 by putting the parties to notice that the Appeal would be heard on the said day. It appears that on 7-9-2010, an application came to be filed by the Appellants for adjournment which was not found acceptable by the Learned District Judge presiding at Niphad who accordingly dismissed the Appeal for non prosecution on 23-10-2010. The Petitioners i.e. the original Appellants thereafter filed the instant Application for condonation of delay and for restoration of the Appeal. When the application was listed before the Learned District Judge at Nashik on 21-11-2013, no appearance was put up on behalf of the Appellants though the matter was called out on number of occasions. The application was accordingly kept for dismissal on the next date and on the next date i.e. 8-7-2015, the application came to be dismissed for non prosecution in view of the fact that the Applicants / Appellants and their Advocate were absent. The aforesaid facts exemplify the manner in which the Appeal was being prosecuted by the Petitioners /Defendants. The said fact shows the callous and the negligent conduct on the part of the Petitioners / Appellants. As indicated above, the

Appeal was ready for hearing in the year 2004 and was adjourned from time to time so as to enable the Appellants to bring the heirs of the deceased parties on record. However, ultimately the Lower Appellate Court was constrained to dismiss the Appeal for default on 23-10-2010. Thereafter the application filed for restoration was also left unattended and ultimately the impugned order dated 8-7-2015, came to be passed.

4 Having regard to the facts as disclosed above, obviously a Writ Court cannot show indulgence to such a litigant, the Writ Petition is accordingly dismissed.

[R.M.SAVANT, J]

Certified to be true and correct copy of the original signed order