

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.515 OF 2015
IN
CIVIL REVISION APPLICATION NO. 212 OF 2007**

Jaharabi Abdul Hamid Qureshi & Ors.	..Applicants
Vs.	
Abdul Bari Rasoolsaheb Shaikh & Hiroli	..Respondent

Ms. Prabha Badadare i/b Mr. P. R. Arjunwadkar for the Applicants
Mr. R.M. Khairdi for the Respondent

CORAM : R. M. SAVANT, J.
DATE : 11th DECEMBER, 2015

P.C.

1 The above Civil Application has been filed for restoration of the above Civil Revision Application which came to be dismissed for non prosecution on account of the non appearance of the Advocate on 22-6-2015. The reasons why the Advocate could not remain present are mentioned in the above Civil Application and especially in paragraphs 3, 4, 7, 8 and 9 of the above Civil Application. The sum and substance of the case in the said paragraphs is that the Learned Advocate appearing for the Applicants was not expecting the matter to reach final hearing and hence was awaiting the next date as per the CMIS system. Since no date was given to the Civil Revision Application as per the CMIS, that the Learned Advocate made inquiries upon which it was found that the above Civil Revision Application has already been dismissed for non prosecution. It appears that prior to the instant dismissal of

the Civil Revision Application which was earlier dismissed for non prosecution on 11-2-2011 and on 12-12-2011 and thereafter the instant occasion. Since the Civil Revision Application was pending hearing and final disposal it would be just and proper to restore the Civil Revision Application to file.

2 However, the Learned Counsel appearing on behalf of the Respondent/decreed holder points out that the instant occasion being the third occasion on which the Civil Revision Application has been dismissed for non prosecution, the Applicants would have to be put to terms.

3 It is required to be noted that on the last occasion i.e. 22-6-2015 no appearance was put up on behalf of the Respondent also. This fact lends credence to the case of the Applicants that the Learned Counsel was not expecting the Civil Revision Application to reach hearing.

4 Be that as it may having regard to the fact that an opportunity is required to be given to the Applicants to prosecute the Civil Revision Application on merits, it would be just and property to set aside the order dated 22-6-2015 dismissing the Civil Revision Application for non prosecution and restore the same to file. The Civil Revision Application is accordingly restored to file and the interim relief would also stand restored. In the facts and circumstances of the case, the Applicants to pay costs of Rs.10,000/- to the

Respondent within 6 weeks from date and costs to be tendered to Mr. Kharidi the Learned Counsel appearing for the Respondent, in the name of the Respondent. List the Civil Revision Application for final hearing in the week commencing on 18-1-2016 to be shown in the category of senior citizen.

6 The Civil Application is accordingly disposed of.

[R.M.SAVANT, J]