

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
WRIT PETITION NO. 9004 OF 2015

Rajjabali Compound Resident Welfare  
Association and ors. .. Petitioners  
vs.  
Abdul Samed Mohammed Sarif and anr. .. Respondents

Mr.Kunal Bhanage for the Petitioners  
Mr. S.P. Srivastava for the Respondents.

**CORAM : M. S. SONAK, J.**  
**DATE : 11 SEPTEMBER 2015.**

**P.C. :-**

1] Rule. With the consent of and at the request of learned counsel for the parties, Rule is made returnable forthwith.

2] The challenge in this petition is to the order dated 1 September 2015, by which, the Appeal Court has refused to restore the appeal, which was dismissed for default. The Appeal Court has recorded that prior to date of dismissal of the appeal for default, the appellants on eight successive dates either remained absent or refused to proceed with the hearing of the appeal.

3] Considering the conduct of the petitioners, the petitioners are really not entitled to indulgence. The reasons set out for recall of the order was that the advocate for the petitioners was busy/held-up in

some other part-heard matters. Nevertheless, in the present case, the petitioners had engaged an advocate and if, on the crucial dates, the advocate could not remain present, it is appropriate if yet another opportunity is granted to the petitioners, subject of course, to the payment of exemplary costs. The opportunity is granted on the basis of statement made by Mr. Bhanage, learned counsel appearing for the petitioners, that on next date the hearing in the appeal would proceed, without any excuse and that the costs will also be paid within a period of four weeks from today.

4] Accordingly, subject to payment of costs of Rs.1 Lac by the petitioners, the impugned order dated 1 September 2015 as well as the order dismissing the appeal for default made on 6 July 2015 are set aside. If the costs are not paid within a period of four weeks from today, then this petition shall be deemed to have been dismissed and the orders dated 6 July 2015 and 1 September 2015 shall revive without any further reference to the Court.

5] Mr. Bhanage, learned counsel for the petitioners, points out that the Appeal Court had stayed the execution of eviction decree made by the Trial Court, subject to the petitioners depositing

reasonable compensation of Rs.10,000/- per month. He points out that such compensation has been deposited upto November 2014 and there is some default for the balance period. He submits that an opportunity be granted to make good the default, again, within a period of four weeks from today.

6] Considering the circumstance that the appeal is being restored, subject to payment of costs, an opportunity is granted to the petitioners to deposit, within a period of four weeks from today, the balance amount in respect of reasonable compensation. If the same is indeed deposited within four weeks from today, then the interim relief pending the appeal shall also stand revived. Further, on the basis of statement that such amount will indeed be deposited within a period of four weeks, there shall be restraint upon execution of eviction decree for a period of four weeks. If the amount is deposited, then the stay order granted by the Appeal Court will revive and the restraint will continue during the pendency of the appeal.

7] The amount of costs be paid directly to respondent No.1 Mr.Abdul Samed Mohammed Sarif or the petitioners shall be at

liberty to deposit the costs in the Appeal Court, within a period of four weeks from today. If deposited, respondent No.1 shall be at liberty to withdraw the same unconditionally.

8] The parties to appear before the Appeal Court on 21 September 2015 at 11.00 a.m. and produce an authenticated copy of this order.

9] In case, the costs are paid and the appeal is restored, the Appeal Court is directed to dispose of such appeal, as expeditiously as possible and in any case within a period of three months from the date of production of authenticated copy of this order. Further, the petitioners or their advocates are directed to appear before the Court on the date fixed for hearing of the appeal and to proceed with the hearing of the appeal without any further excuses.

10] Rule is made absolute to the aforesaid extent.

11] All concerned to act on the basis of authenticated copy of this order.

**(M. S. SONAK, J.)**

**CERTIFICATE**

**“I certify that this Order uploaded is a true  
and correct copy of original signed Order.”**