

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.222 OF 2015
IN
APPEAL FROM ORDER NO.1209 OF 2010**

Ram Murati Jaswath .. Applicant

vs.

M/s.Zorastrain Radih Society and Ors. .. Respondents

Mr.Dilip Shukla i/b Mr.D.D.Singh for the applicant

Mr.R.H.Mishra for the respondent no.1

**CORAM : K.K.TATED, J.
DATED : 28/04/2015**

PC:

1 Heard the learned counsel for the applicant.

2 This application is preferred by defendant no.24 for restoration of Appeal from Order No.1209 of 2010 which was dismissed in view of conditional order dated 14.1.2013 and 27.8.2013 for non-removal of office objections.

3 The learned counsel for the applicant submits that the present Appeal was admitted by this court on 20.1.2011. He submits that for

non-payment of bhatta charges the Appeal from Order stands dismissed. He submits that in the interest of justice, this Hon'ble Court be pleased to restore the Appeal from Order and be heard on its own merits. He submits that applicant has good chance of success in the present proceeding. On the basis of these submissions, the learned counsel for the applicant submits that this Hon'ble Court be pleased to restore the Appeal from Order for hearing on its own merits.

4 On the other hand the learned counsel for the respondent no.1 vehemently opposed the present Civil Application. They filed their affidavit in reply dated 18.3.2015. The learned counsel for the respondent no.1 plaintiff submits that they filed S.C.Suit No.2265 of 1983 for recovery of possession of the suit plot of land on which the applicant and other defendants were trespassed. He submits that the suit was settled between plaintiff and defendant no.1 to 22. Thereafter, no one appeared on behalf of applicant defendant no.24. Hence, the Trial Court passed ex-parte decree on 7.8.2007 against defendant no.24. He submits that ex-parte decree for possession was executed after following due process of law on 30.9.2005 and possession was taken by the plaintiff. He submits that thereafter, shed which was on suit land demolished and the Mumbai Municipal Corporation constructed D.P.Road. As on today the suit property is not in existence. Hence, there is no question of allowing the present Civil Application. In support of this contention, the plaintiff relies on paragraph 5 of their affidavit in reply which reads thus :

“5. Besides, even the subject matter of the suit being an

unauthorized structure, is no more in existence as the same has been razed and the land in question has been handed over to the BMC for development of a road and a road has also been constructed. Under the circumstances, there is no useful purpose achieved in continuing with the above Appeal which is only sought to now be restored after a delay of 350 days, only with a view to harass the Respondent No.1.”

5 On the basis of this submission, the learned counsel for the plaintiff submits that Civil Application be dismissed with costs. He further submits that earlier also present Appeal from Order was dismissed twice and same was restored.

6 I have heard both the sides at length. It is to be noted that in the present proceeding the suit structure / portion of the land is not in existence as on today. The same was handed over by the plaintiff to the Corporation and Corporation has already constructed DP road. As the suit structure is not in existence, there is no question of entertaining the present Civil Application. Hence, same is rejected.

(K.K.TATED, J.)