

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

***CIVIL APPLICATION NO. 294 OF 2015
IN
SECOND APPEAL NO. 138 OF 2005***

Madhav Karbhari Aher

(since deceased, through heirs)

1 A. Sampatrao Madhavrao Aher & ors. ... Applicants

v/s

1. Vijay Vasant Aher & ors.

... Respondents

Mr. Anilkumar Patil for the applicants/appellants.

Ms. Pallavi Dabholkar i/by G.S. Godbole for Resp. Nos. 1, 2B, 2C and 3.

Coram: N.M. Jamdar, J.

Dated: 29 July, 2016

P.C.:

The Applicants seek to recall the order dated 8 October 2014 passed by the Registrar (Judicial II) dismissing the second appeal for non-prosecution, for non-removal of office objections.

2 The delay in filing the application is of 87 days. Learned counsel for the Respondents opposes the restoration. She submits that the conduct of the Appellants of neglecting to prosecute the

appeal is continuous. She submits that even decree is executed and possession is received by the Respondents/Plaintiffs. Today, what is to be considered is, whether the appeal needs to be restored which was dismissed for non-prosecution. What is the consequence of the Appellants losing the possession is something which will be considered when the appeal will be taken up for consideration. As regard the present order passed by the learned Registrar, an explanation is given by the Appellants. The order was passed on 8 October 2014 and the application was filed on 7 February 2015. As regard the negligence of the Appellants, as argued by the learned counsel for the Respondents, the Appellants have already suffered, inasmuch as, lost possession of the suit property.

3 Considering this position, the civil application is allowed in terms of prayer clauses (a) and (b). Second Appeal No.138 of 2005 stands restored to file.

4 The civil application is disposed of accordingly.

5 Amendment to be carried out within a period of four weeks from today.

(N. M. Jamdar, J.)

