

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

***CIVIL APPLICATION NO. 263 OF 2015
IN
CIVIL APPLICATION NO. 1155 OF 2006
IN
APPEAL FROM ORDER NO. 838 OF 2006***

Santalal Basudeo & anr.

... Applicants

v/s

Municipal Corpn. of Gr. Mumbai & ors.

... Respondents

None present for the applicants.

Mr.A.V.Diwate for the Corporation.

CORAM: N.M. JAMDAR, J.

DATED : 15 MARCH 2016

P.C.:

Civil Application No.263 of 2015 seeks restoration of the Appeal from Order which was dismissed on 5 October 2012 as none had appeared for two consecutive dates to prosecute the delay. The appeal from order challenges the order passed by the City Civil Court, Mumbai, dated 26 September 2006 wherein the prayer of the Appellant to set aside the order dated 11 July 2002 dismissing the suit for default was rejected.

2 If the order impugned in the appeal is perused, it indicates

that the suit is filed for declaration and that the auction of sale held by defendant No.4 on 2 November 1984 is void. The impugned order narrates the conduct of the Appellant of repeated negligence in prosecuting the suit. The same conduct has continued even in the appeal wherein none appeared to prosecute the appeal when the matter is called out. Even when this application is called out, the learned counsel is not present. The suit has sought to be agitate the cause of action which has accrued in the year 1984. Considering the reasons given in the order impugned in the appeal, no useful purpose will be served by setting aside the order dismissing the appeal for default, by condoning the delay.

3 The civil application is accordingly rejected.

(N. M. JAMDAR, J.)