

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

CIVIL APPLICATION NO. 1804 OF 2016
IN
FIRST APPEAL NO. 1808 OF 2013

Dr. Ashok D. Sounle & Ors.

.. Applicants

Vs.

Bombay Diocesan Trust Association
Pvt. Ltd. & Ors.

.. Respondents

Mrs. Sulbha A. Dhamale for the Applicants.

Mr. Amit Palkar, GP for Respondent No.4.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 1st OCTOBER, 2016.

P. C. :

1. This is an application seeking recall of the order dated 12.08.2015 passed in First Appeal 1808 of 2013 with Civil Application No. 4704 of 2013 and restore the First Appeal along with Civil Application.

2. There is delay of 229 days in preferring this application. It is submitted that the order dated 12.08.2015 dismissing the appeal for non prosecution came to be passed on submission of learned counsel for the appellant that they have returned the papers to the client and do not have any instructions. It is urged that the then managing trustee has not given instructions and in view thereof, the said submission was made. The society has passed the resolution on 30.03.2016 appointing the new managing trustee and in view thereof, it is urged that there is sufficient

cause for the condonation of delay in preferring the application to recall the order dated 12.08.2015.

3. Having heard learned counsel for the respondents who has opposed this application, for the reasons stated in para 6 of the application, considering the same as sufficient cause for condonation of delay and for dismissal of the appeal for non prosecution, the application is allowed to the extent that the earlier order dated 12.08.2015 is recalled. First Appeal No. 1808 of 2013 along with Civil Application No. 4704 of 2013 is restored to its original file.

4. Learned counsel for the respondents submits that the notice of the appeal may be dispensed with, however, learned counsel for the appellants be directed to serve the copy of the appeal memo. Learned counsel for the appellants undertakes to do so.

[DR. SHALINI PHANSALKAR-JOSHI, J.]