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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.3562 OF 2014
IN
FIRST APPEAL NO.2174 OF 2008

Gorai Mitratva Co-op. Hsc. Soc. Ltd. & Ors.	...Applicants
V/s.	
Rambaran R. Yadav	...Respondent

WITH
CONTEMPT PETITION NO.7 OF 2015
IN
FIRST APPEAL NO.2174 OF 2008

Rambaran R. Yadav	...Applicant
V/s.	
Gorai Mitratva Co-op. Hsc. Soc. Ltd. & Ors.	...Respondents

Mr.Sachindra Shetye for the Applicant in Civil Application.

Mr.R. Sunder with Mr.J.R. Khan for the Respondent and the Applicant in Contempt Petition.

CORAM : R.D. DHANUKA, J.
DATE : 28TH APRIL, 2016.

P.C. :-

1. Heard learned counsel for the parties at length.
2. By this civil application the applicants seek recall of the order dated 4th September, 2014 passed by this Court disposing of First Appeal No.2174 of 2008. It is the case of the applicants that

though the applicants had engaged an advocate to represent them before this Court in the said First Appeal No.2174 of 2008, the learned advocate did not appear and the proceedings came to be disposed of *ex-parte*. The other reasons are recorded by the applicants in the civil application which are disputed by the original appellant (respondent in this civil application).

3. A perusal of the record indicates that the learned advocate representing the applicants did not appear before this Court on several occasions when the first appeal was being heard. Mr.Shetye, learned counsel appearing for the applicants states that the applicants have now engaged another advocate and assures this Court that no unnecessary adjournment would be taken by the applicants if the first appeal is heard by this Court afresh.

4. Learned counsel appearing for the respondent in fairness after taking instructions from his client, submits that though there is lot of injustice to the respondent by the applicants, if this Court is of the view that order shall be recalled and the matter should be heard afresh, the applicants should be put to heavy costs i.e. at least in the sum of Rs.1.00 lac and it should be made clear that no unnecessary adjournment should be applied by the applicants when the matter is heard afresh.

5. Without going into the allegations and counter allegations

made by the parties against each other in the civil application and in reply respectively, in my view, interest of justice would be met if the *ex-parte* order dated 4th September, 2014 passed by this Court is recalled however, on the condition that the applicants pay a sum of Rs.75,000/- to the respondent within eight weeks from today and also on the condition that the applicants shall not seek any unnecessary adjournment before the learned Judge hearing the first appeal. The assurance of the learned counsel appearing for the applicants is accepted.

6. It is made clear that if the costs of Rs.75,000/- is not paid within a period of eight weeks from today to the respondent and the receipt of acknowledgement of payment of Rs.75,000/- is not shown to the learned Registrar, the order of recall of the order dated 4th September, 2014 passed by this Court to stand vacated without further reference to the Court. If the payment is made by the applicants to the respondent as directed aforesaid, the first appeal shall be heard by the learned Judge having the assignment of the first appeal expeditiously.

7. The order dated 4th September, 2014 is recalled on aforesaid conditions. The civil application is disposed of in aforesaid terms.

8. In view of disposal of the civil application, the contempt

petition filed by the petitioners does not survive and is accordingly disposed of.

9. The first appeal shall be placed on board for hearing in the week commencing from 4th July, 2016.

(R.D. DHANUKA, J.)