

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

**CIVIL APPLICATION NO. 165 OF 2016
IN
CIVIL APPLICATION NO. 2 OF 2015
IN
ARBITRATION PETITION NO. 56 OF 2015**

Smt. Nigar Wajid Khan and ors. ... Applicants

vs.

Shri. Galib Moosa Sayyad ... Respondent

Mr. Vipul Shah i/by Sushant S. Prabhune, Advocate for the applicants.

Ms. Monica Haseja i/by Savita A. Prabhune, Advocate for the respondent.

Coram : Smt. R. P. SondurBaldota, J.

Date : 7th October, 2016

P.C. :

1). This Civil Application is taken out by the petitioners for restoration of Civil Application No. 2 of 2016, which was filed for restoration of the main petition. The petition was dismissed for default on 20th November, 2015. The petitioners then took out Civil Application No.2 of 2016 which again came to be dismissed for default on 5th February, 2016. The present civil application is taken out on 16th June, 2016 i.e. after the delay of about 117 days. Since the affidavit in support of Notice of Motion did not state the details of the cause claimed by the applicants, they were permitted to file an additional affidavit. Accordingly additional affidavit dated 27th September, 2016 has

been filed today. On perusal, it is seen to be as vague as the application.

2). The application merely states that for inability of the advocate to appear on 20th November, 2015 and 5th February, 2016 the applicants should not be made to suffer loss and therefore the petition should be restored. At Para 8 of the application, it is claimed that the order of 5th February, 2016 was not conveyed to the applicants by the earlier advocate. The applicants, learnt about the same upon enquiry through another person in the month of filing of the application. In the additional affidavit filed today, the applicants claim that they were informed by the earlier advocate in the month of June-2016 that the civil application has been dismissed for non-prosecution. He also informed that he cannot attend the proceedings on account of personal difficulty. Thus, the statements made in the two affidavits on the crucial aspect are inconsistent with each other. In any case, the statements made are also vague. Thus, there is no case whatsoever made out by the applicants for condoning the delay of 117 days and for restoration. The Civil Application is therefore dismissed.

[Smt. R. P. SondurBaldota, J.]