

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1707 OF 2016  
IN  
WRIT PETITION NO. 9473 OF 2013

Shri Sudhakar Narayan Shipurkar. ... Applicant.  
V/s.  
Shri Nitish E Cooperative Housing  
Society Ltd. and another. ... Respondents.

Chetan Patil for the applicant.  
Y.D.Dalvi for respondent No.1.  
A.R.Mitkari, AGP for respondent No.2.

**CORAM : D.H.WAGHELA, C.J.**

**DATE : 15<sup>th</sup> July 2016.**

**P.C. :**

The application is made with a prayer to condone the delay of 144 days delay in making the application and to recall the order dated 11<sup>th</sup> January 2016 whereby the petition was dismissed for non-prosecution. It is submitted that due to inadvertence the then learned advocate of the petitioner had not appeared before the Court and the applicant only learnt about the matter in the last week of June 2016 when he enquired from the advocate about the status of the matter. Thereafter the applicant had to change the advocate and engage the present advocate to represent him. It is submitted

that the applicant should not be made to suffer on account of inadvertence or negligence of the advocate. Learned counsel appearing for respondent Nos.1 and 2 have expressed no objection to allowing the application, even as the original petition appears to have remained pending for more than two years after the initial order dated 10<sup>th</sup> December 2013. Even as the explanation submitted in the application is not satisfactory, learned counsel for the applicant requested to allow the application on condition of payment of appropriate amount of costs so as to have the original petition disposed on merits. He also submitted that now if the petition is restored, it will be properly attended and, in case of any default, it may be immediately dismissed again with costs.

2. In the facts and circumstances, the application is allowed, the delay is condoned and the order dated 11<sup>th</sup> January 2016 in Writ Petition No.9473/2013 is recalled on condition that the applicant shall pay to the Maharashtra State Legal Services Authority a sum of Rs.5,000/- on or before 30<sup>th</sup> July 2016. If that condition is not fulfilled and proof thereof is not produced to the registry on or before 30th July 2016, the application shall stand dismissed and the aforesaid order of restoration shall not take effect. Application is disposed accordingly.

CHIEF JUSTICE