

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.3066 OF 2015
IN
WRIT PETITION NO. 5018 OF 2000**

Pandurang Gopal Mhatre & Ors	..Applicants
In the matter between	
Pandurang Gopal Mhatre & Ors.	..Petitioners
Vs.	
M/s. Veekaylal Investment Company Private Ltd.	..Respondents

Mrs. Shakuntala Mudbidri for the Applicants
Mr. Mohd Adil Kapadia i/b Mr. R. R. Sharma for the Respondent No.1

CORAM : R. M. SAVANT, J.
DATE : 29th NOVEMBER, 2016

P.C.

1 The above Civil Application has been filed for restoration of the above Writ Petition which had stood dismissed for non prosecution on account of the conditional order dated 20-4-2001 passed by a Learned Single Judge of this Court. By the said conditional order, the Petitioner was to remove the office objections within the time frame stipulated in the said order, on default the Petition was to stand dismissed for non prosecution. On account of the default committed in non removing the office objections, the above Petition stood dismissed for non prosecution on operation of the conditional order dated 20-4-2001. The reasons why the said conditional order could not be complied with and the reasons why there is a delay in filing the above Civil

Application have been stated in paragraphs 3, 4 and 5 of the above Civil Application. The averments in the said paragraphs relate to the accident in which the Learned Advocate for the Petitioner was involved, resulting in the injuries which she suffered on account of the said accident and as a result of which she was not in a position to attend the court for a considerable period of time as she underwent surgery. It has also been averred that the Petitioners were under a bonafide impression that the Petition was pending and it is only sometime in the year 2015 that the Petitioners realised that the above Petition has dismissed for non prosecution on account of the said conditional order dated 20-4-2001. It is required to be noted that the Petition already stood admitted prior to its dismissal for non prosecution.

2 The Learned Counsel appearing on behalf of the Respondent No.1 would contend that the after the Petition was dismissed for non prosecution, third party rights have been created, as also the Suit filed by the Petitioner in the City Civil Court has been dismissed. However, the said facts would be relevant whilst adjudicating the above Writ Petition on merits, on resotration.

3 In view of the reasons mentioned in the above Civil Application, case for exercise of discretion in favour of the Petitioners is made out. This is in view of the dictum that a party should not be made to suffer on account of the default if any of the Advocate. Hence applying the said dictum, the above

Civil Application is allowed, resultantly the Writ Petition is restored to file. Affidavit in reply if any to be filed within six weeks from date. List the above Petition for final hearing after the censuing Christmas Vacation in the week commencing 6-2-2017. The Learned Counsel Mr. Kapadia waives notice on behalf of the Respondent No.1

4 The Civil Application is accordingly disposed of.

[R.M.SAVANT, J]