

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

APPEAL FROM ORDER NO. 60 OF 2016

WITH

CIVIL APPLICATION NO. 75 OF 2016

IN

APPEAL FROM ORDER NO. 60 OF 2016

Mr. Sandip Baban Taware

...Appellant

Versus

Mr. Baban Taware & Anr.

...Respondents

Mr. S.L. Mhatre, i/b Shraddha Gholap, for the Appellant.

Mr. Hemant Ghadigaonkar, for the Respondent No. 1.

CORAM : G.S. KULKARNI, J.

DATE : 6th December 2016

ORDER :

1. Yesterday this Appeal was listed on board. However, none appeared for the Appellant and therefore, it was placed today under the caption of 'Dismissal'.

2. When the Appeal was called out in the morning session,

none appears. However, in the second sessions, Mr. Mhatre appears and requested to keep back the matter. On second call, none appears for the Appellant.

3. A perusal of the proceedings indicates that the impugned order is dated 9th October 2015 passed by the learned Trial Judge in Notice of Motion No. 3368 of 2015 in S.C. Suit No. 1958 of 2015 whereby the Notice of Motion was dismissed. There is no protection which is granted by this Court during the pendency of this Appeal. It appears that the Appellant is therefore not interested to pursue this Appeal.

4. Accordingly, dismissed for non prosecution. Needles to observe that it will be open to the Appellant to prosecute his rights and contentions in the pending suit. The learned Trial Judge shall decide the Suit on its own merits without being influenced by the *prima facie* findings in the decision of this Notice of Motion.

[G.S. KULKARNI, J.]