

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5296 OF 2016

SUMAN TUKARAM KATE AND ANOTHER
VERSUS
PARIMAL DINKAR GHODAKE

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Advocate for Petitioners : Miss Mahajan Surekha P.
Advocate for Respondent : Shri Patil Mangesh G.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 12, 2017
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PER COURT :-

1. The petitioners are aggrieved by the order dated 11.3.2016, by which, Civil Misc. Application No.1 of 2016 filed for restoration of RCA No.609 of 2014 has been rejected. The said appeal was dismissed in default on 4.2.2015.

2. I have considered the submissions of Miss Mahajan on behalf of the petitioners and Shri Patil, who has strenuously defended the impugned order.

3. The petitioners had preferred a RCA No.609 of 2014 for challenging the order of the trial Court. It is contended that since the lawyer representing the appellants used to travel from Jalgaon to reach the Court at Bhusawal, he was unable to attend to the proceedings for three dates. On 4.2.2015, when the appeal was dismissed in default, an

application for adjournment was not filed. The appeal Court, therefore, dismissed the appeal on account of non-appearance of the concerned Advocate.

4. Learned counsel for the respondent strenuously submits that if the Advocate for the appellant was not in a position to attend the hearing and conduct the appeal, he should have made arrangements to file an application for adjournment. Without filing any application and leaving the matter unattended, cannot be countenanced and hence the impugned order is justified. In the alternative, he submits that heavy costs be imposed on the petitioner.

5. It is quite obvious that if the appeal of the petitioners is dismissed, the doors of litigation would be closed on the petitioners. It is equally obvious that the appeal was not pending for a very long time in order to conclude the Advocate was neglecting a very old appeal. It was just a matter of about 14 months that the appeal was pending. So also, it is questionable as to whether an appeal could be dismissed in default.

6. Considering the above and keeping in view that laches have not been attributed to the conduct of the petitioners, inasmuch as, it was not the case of the petitioners that there was an ulterior motive in keeping the matter pending, I do not find that the impugned order could be sustained. The appeal court could have imposed costs on the

petitioners keeping in view that the application for restoration was filed within time. Issue of succession certificate is the subject matter of the proceedings.

7. Considering the above, this petition is allowed. The impugned order dated 11.3.2016 is quashed and set aside and Civil Misc. Application No. 1 of 2016 is allowed. RCA No.609 of 2014 is restored to the file of the Appeal Court subject to the petitioners' depositing costs of Rs.1500/- each on/or before the 7th day of July, 2017 before the appeal Court. The litigating sides shall appear before the appeal Court on the said date 7.7.2017. The respondent can withdraw the costs without condition. Notice need not be issued by the appeal Court since the parties are appearing in the matter.

(RAVINDRA V. GHUGE, J.)

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