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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 173 OF 2017
IN
CRIMINAL APPLICATION NO. 1538 OF 2002

Imtiyaz Ismail Baig & Anr.	...	Applicants.
vs.		
Mominpada Masjid Yakub Baig Trust and Ors.	...	Respondents

Mr. Yusuf Mithi h/f/. Mr. Haroon Solkar appearing for the Applicant.
Ms. Sanchita Thakur i/b. Ms. Priyanka Thakur for Respondent no.1
Mr. S. V. Gavand, APP for the State.

CORAM : A. K. MENON, J.
DATE : 18th JULY, 2017

P.C.,

1. This application seeks restoration of Criminal Application No. 1538 of 2002. Learned Counsel for the applicant states that the matter came to be dismissed on 27th January, 2017 since none appeared in the matter. According to the learned Counsel their earlier Advocate had not been attending to the matter due to the fact that he had discontinued attending Court appearances.
2. When the matter was listed on 30th November, 2015 none appeared. In paragraph 3 of the application, it is stated that Mr. Solkar, learned Advocate was not present in the Court on account of old age related ailments and presently he is not attending Court. The matter came to be dismissed. On 23rd June, 2016 an application for restoration was allowed since it was filed within period of

limitation. Thereafter, it appears that the Criminal Application was once again listed on 13th January, 2017 but once again none appeared for the petitioner. The matter was placed on 19th January, 2017 for dismissal but it appears that the matter was not listed. The record indicates that on 27th January, 2017 the application was shown on board for dismissal yet the applicant and Advocate were absent. The application came to be dismissed and the present application is thereafter taken on 17th February, 2017 within the period of limitation.

3. The application is opposed by the respondent no.1. Learned Advocate submits that the reasons given in the application are not genuine. Respondent nos. 2 to 4 are stated to be beneficiaries. However, original respondent no. 3 is shown to have been deleted.

4. In the circumstances, I pass the following order :

- (i) Application is allowed in terms of prayer clause (a) subject to payment of costs of Rs.10,000/- to respondent no. 1.
- (ii) The costs shall be paid within a period of two weeks from the date this Order is uploaded.
- (iii) If costs are paid, list the Criminal Application on board as per CMIS.
If cost is not paid this Order will stand vacated.
- (iv) Application is disposed of in the above terms.

(A. K. MENON, J.)