

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

**CIVIL APPLICATION NO.2304 OF 2015
IN
FIRST APPEAL NO.489 OF 2011
WITH
CIVIL APPLICATION NO.80 OF 2017
IN
FIRST APPEAL NO.489 OF 2011**

Suresh Shivshankar Saddalgi ...Applicant/Appellant

vs.

Gautamchand Jivraj Sancheti ...Respondent

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Mr. Priyal G. Sarda, for the Applicant.

Mr. A.S. Kulkarni, for the Respondent.

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CORAM : S.C. GUPTE, J.

DATED : 10 APRIL 2017

P.C. :

. Heard learned Counsel for the parties.

2. Civil Application No.2304 of 2015 seeks recall of a self-operative dismissal order passed by this Court on 25 March 2011, for want of prosecution. The order required the Appellant/Applicant to file copies of private paper books within one year, failing which the appeal would stand dismissed for want of prosecution, without further reference to the Court. There was no compliance with the order. As a result, the appeal has been dismissed. It is however pointed out that the Appellant has, in pursuance of the order passed by this Court on Civil Application in the First Appeal, been granted stay of execution, subject to the

Appellant depositing a sum of Rs.10 lakhs with the Trial Court within a period of 10 weeks. This amount has since been deposited by the Appellant with the Trial Court. In addition to this, an amount of Rs.51,000/- was deposited by the Appellant in the Trial Court. The dispute between the parties pertains to specific performance of an agreement for sale. In pursuance of the agreement for sale, a sum of Rs. 9 lakhs has already been deposited by the Respondent before the Trial Court. The entire amount of 19.51 lakhs stands invested by the Trial Court in pursuance of the directions of this Court. In these circumstances, learned Counsel for the Appellant/Applicant prays for recall of the dismissal order and restoration of the First Appeal. On the other hand, it is submitted by learned Counsel for the Respondent that, in view of the dismissal order passed by this Court, an execution application, being Special Darkhast No.17 of 2011, was filed by the Respondent before the Trial Court, in which an order of possession, along with execution of a sale deed has already been passed in favour of the Respondent and the same has since been satisfied by execution of a deed and delivery of possession of the suit property. Anyway, without disturbing this order passed in the execution as of today, the Appellant/Applicant may be permitted to prosecute his First Appeal after recall of the dismissal order.

3. In the premises, Civil Application No.2304 of 2015 is allowed in terms of prayer clause (b) by condoning the delay, if any. Since the First Appeal will have to be now transferred to the District Court at Solapur in view of change of pucuniary jurisdiction, the First Appeal, restored by this order, shall be transferred to the District Court

at Solapur.

4. In view of the disposal of the main Civil Application (Civil Application No.2304 of 2015), Civil Application No.80 of 2017 does not survive and the same is disposed of. The Applicant/Applicant will be, however, at liberty to apply for such interim reliefs in the transferred First Appeal before the District Court, as he may be advised. All rights and contentions of the parties on merits in that behalf are kept open.

(S.C. GUPTE, J.)