

Rane

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

Civil Application in SA (ST) NO. 7727 OF 2017

IN

Second Appeal NO. 526 OF 2013

1. Mr. Shrirang Dasharath Gaikwad
(deceased) through
legal heirs and Ors.

.....Applicants

Versus

1. Mr. Satish Vishwamber Gaikwad And ors. ...Respondent(s)

Mr. Ravi Kadam, Advocate for the Applicants.

Mr. Nikhil Wadikar, Advocate for the Respondents.

CORAM: N.M. JAMDAR, J

DATED: 21st April, 2017

PC:-

. By this Application, the Applicants seek to recall the order dated 5 December, 2016. On 5 December, 2016 the Second Appeal was dismissed for non-prosecution. None appeared for the Applicants, inspite of keeping the matter for dismissal in view of earlier absence on the part of the Applicants. Considering the various facilities extended by this Court for keeping track of the matter, the reasons given in the

Application cannot be considered to be sufficient. Only because the learned Counsel for the Applicant, has tendered unconditional apology, I am inclined to recall the order dated 5 December, 2016.

2 However, two aspects must be made clear. Firstly, at the time of issuance of notice, the Court has observed that, endeavor may be made to dispose off the Second Appeal finally at the admission stage. If the Appeal is not prosecuted diligently, I do not think there is any need to give priority of this nature considering that there are Appeals of 1992 pending for hearing. The Appeal will be placed on Board for admission as per its C.M.I.S. Date.

3 The learned Counsel for the respondent, points out, that the order of status-quo has been passed in this Appeal. As far as the order of status-quo granted on September 25, 2013 is concerned, the same will have to be read in context of the finding of the learned District Judge. The Learned District Judge, after holding that the Applicants are not in possession of the suit property, has dismissed the suit filed by the Applicants. Therefore, this order of status-quo cannot mean that an order of injunction is granted in favour of the Applicants. With these two clarifications, the Civil Application is allowed in terms of prayer clauses (a) and (b). Place the Second Appeal on board for admission as per its C.M.I.S date.

(N.M. JAMDAR,J.)