

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1035 OF 2016
IN
SECOND APPEAL NO.47 OF 2013**

Dinkar B. Patil & Anr. ...Applicants/Appellants

Versus

Nitin M. Patil & Anr. ... Respondents

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Mr. Sachin P. Shetye, Advocate for the Applicants/Appellants .

Mr. P.D.Dalvi, Advocate for the Respondent Nos.1 and 2.

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CORAM : S.C.GUPTE, J.

DATE : 10 FEBRUARY 2017

P.C. :

. Heard learned counsel for the Parties.

2 This Civil Application seeks restoration of the Second Appeal, which was dismissed for want of compliance with the requisitions of this Court. This Court had directed the Applicants/Appellants to file paper-book within a period of one year. Since this paper-book was not filed within the stipulated period, the appeal has stood dismissed. The Applicants/Appellants seek to restore the appeal to the file. There is a delay of 184 days in filing the present Civil Application. For the reasons stated in the Civil Application, the delay is condoned and the Second Appeal is restored to the file. The learned counsel for the Applicants/Appellants submits that the paper-book is now ready and will be filed within a period of one week from today.

3 The Civil Application is disposed of accordingly.

4 In view of the restoration of the Second Appeal, interim injunction granted by this Court in Civil Application No.114 of 2013 must be restored. The learned counsel for the Respondents opposes this application. He submits that there are concurrent findings of two Courts below that the possession has been made over to his clients.

5 By an order dated 10.9.2015, while disposing of the Applicant's Civil Application, this Court has come to prima-facie finding that possession was not taken over from the Appellants. Though the panchanama prepared by bailiff in execution proceedings shows delivery of possession, the same was not actually done on the date of execution proceeding. In the premises, this Court has granted injunction to the Applicants/Appellants. Considering the fact that this state of affairs has continued ever since the interim order was passed by this Court on 10.9.2015, there is no reason as to why this interim order should not be restored. Accordingly, interim order granted by this Court on 10.9.2015 shall continue to operate during the pendency of the Second Appeal.

(S.C.GUPTE, J.)