

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 2 OF 2011
IN
APPEAL FROM ORDER (STAMP) NO. 32582 OF 2010

Chhatrapati Shivaji Kutir Mandal .. Applicant/Appellant
vs.
Saeedabanoo Nizamuddin Khan & Ors. .. Respondents

None for Applicant / Appellant.
None for Respondents.

CORAM : M. S. SONAK, J.
DATE : 31 MARCH 2017

P.C :

- 1] None for the applicant / appellant.
- 2] For the reasons set out in Civil Application No. 2 of 2011, delay of 10 days in filing the Appeal from Order is condoned. Civil Application is allowed.
- 3] The challenge in this appeal is to the order dated 20 October 2010, by which, the appellant's / plaintiff's Notice of Motion No. 1576 of 2010 came to be dismissed by the learned Trial Judge.
- 3] In paragraph 9 of the impugned order, the learned Trial Judge, has observed that the evidence in the suit, has already commenced and therefore, it would be appropriate if the suit itself is disposed of on merits. This was the position as on 20 October 2010. By now, it is reasonably expected that the proceedings in the suit must have come to an end. That is perhaps the reason why none appears for the appellant.

4] There is also an order dated 16 October 2012, by which, the appellant's Civil Application No. 160 of 2012 seeking interim reliefs came to be dismissed for want of prosecution. Although, there is on record, an application which seeks recall of this order, it does not appear that such an application was pursued or any orders obtained thereon.

5] For the aforesaid reasons, there is no point in proceeding further with this appeal. The Appeal is therefore dismissed. However, it is clarified that if the suit is not yet disposed of, the learned Trial Judge, shall dispose of the same as expeditiously as possible and further in doing so, the learned Trial Judge shall not be influenced by any observations in the impugned order or the dismissal of this appeal.

6] All contentions of all parties are left open for determination by the learned Trial Judge.

7] The Appeal is disposed of in the aforesaid terms.

(M. S. SONAK, J.)

Chandka