

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

**916 CIVIL APPLICATION NO.10097 OF 2017
IN RC/1112/2016**

TRIMBAK SAKHARAM DOKHE & ANR.

..Applicants

VERSUS

CHANGDEV SHANKARRAO DOKHE

..Respondent

...

Advocate for the Applicants : Shri R.B. Dhaware

Advocate for the Respondent : Shri S.S. Kulkarni

...

CORAM : PR. BORA, J.

Dated: June 26, 2018

PER COURT :

1. The applicants have filed the present application for setting aside the order dated 23rd November, 2016 passed by the Registrar Judicial of this Court and consequently to restore the Civil Application (St.) Nos.25478 of 2016 & 25479 of 2016. Since the delay has occasioned of 203 days, it is also sought to be condoned. Civil Application (St.) Nos.25478 of 2016 & 25479 of 2016 were filed for restoration of the second appeal dismissed on 29.04.2016. The learned Counsel submitted that, since the Counsel appearing for the applicants did not inform the progress in the matter, the applicants could not take the necessary steps to proceed with their matter. In the circumstances, the learned Counsel has prayed for allowing the

present application.

2. The learned Counsel for the respondent has strongly opposed for accepting the prayers so made. The learned Counsel submitted that, the present applicants had filed the suit for perpetual injunction in the year 1995 and the same was dismissed and the first appeal filed by the present applicants was also dismissed long back in the year 2004. The learned Counsel submitted that, since then there was no order even by way of interim order in favour of present applicants. The learned Counsel further submitted that, the second appeal was preferred in the year 2007 and said appeal was also dismissed for default on 09.07.2008 and the same was restored in the year 2015. However, even thereafter the applicants were not diligent in prosecuting their matter and the said second appeal again came to be dismissed on 29.04.2016. In the circumstances, according to the learned Counsel, no leniency can be shown for the gross negligence shown by the applicants.

3. After having considered the submissions and more particularly after having perused the record, it does not appear

to me, that the applicants are genuinely interested in prosecuting their matter.

4. From the record, it is quite evident that, second appeal was previously dismissed on the ground of non-prosecution and the same though was restored in the year 2015, again the applicants showed negligence in prosecuting the matter, which ultimately resulted in second time dismissal of the appeal in 2016. It does not appear to me that, any case is made out by the applicants for allowing the request so made by them. Even otherwise the relief was not granted to the applicants in the year 2001 and since then there is no order in favour of the applicants, it does not appear to me that, there is any propriety now in reopening the Review Application. In the result, the following order is passed.

ORDER

- (i) The Civil Application No.10097 of 2017 is rejected.

(PR. BORA, J.)