

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION No. 165 OF 2018
IN
R.C. No. 1441 OF 2011
(Second Appeal (St.) No. 19200 of 2007)

Ramkrishna Pralhad Mahamuni (Decd.)
through his L.H. Nandkumar Ramkrishna & Ors. ... Applicants

Vs.

Vishwambhar Sakharam Mahamuni ... Respondent

Mr. Uday P. Warunjikar, Advocate for the applicants.

Mr. Rahul S. Kate, Advocate for the respondent.

CORAM: MRS.MRIDULA BHATKAR, J.

DATE: 9th February, 2018.

P.C.:

Upon mentioning, taken on production board.

2. The learned counsel for the applicants submitted that the Second Appeal was dismissed because the conditional order of restoration on payment of cost of Rs.3,000/- was not complied with. He submitted that the respondent has taken out execution proceedings and in execution proceedings, i.e., Regular Darkhast No. 26 of 2006 possession warrant is issued on 31st January, 2018. He submitted that it is a suit for possession and, therefore, he has taken out Application for restoration of Civil Application No. 1259 of 2012. He submitted that the appellant is ready to pay the cost of

Rs.3,000/-.

3. The learned counsel for the respondent submitted that it is an old matter. The Application for restoration was dismissed in the year 2012 for non-payment of cost imposed by this Court.

4. Considered the submissions. As it was a suit for possession, the order of restoration was passed. Though there is inordinate delay, the Application can be allowed by saddling cost.

5. Civil Application No. 1259 of 2012 is restored on condition of payment of cost of Rs.5,000/-. Thus, the appellant/original applicant shall pay the cost of Rs.3,000/- + Rs.5,000/- = Rs.8,000/- by cheque to the respondent/decreeholder.

6. Civil Application is allowed and is disposed of accordingly.

(MRIDULA BHATKAR, J.)