

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 423 OF 2003

Nirmala Ramdas Pandey & Ors. .. Appellants
Vs.
Kanaiyalal Purushotamdas Shah & Ors. .. Respondents

WITH
CIVIL APPLICATION NO. 3757 OF 2015
WITH
CIVIL APPLICATION NO. 4940 OF 2016
WITH
CRR NO. 463 OF 2016
WITH
CIVIL APPLICATION NO. 1566 OF 2017
WITH
CIVIL APPLICATION NO. 345 OF 2018
WITH
CIVIL APPLICATION NO. 346 OF 2018
IN
FIRST APPEAL NO. 423 OF 2003

None for appellants/applicants.

Mr.Satyan N. Vaishnav a/w. Ms.Nupur Mukherjee for respondent Nos.1 to 4, 7, 8 and 11.

Mr.Santosh Dhuri, representative of the Court Receiver present.

CORAM : A.S. CHANDURKAR, J.
DATE : 26TH NOVEMBER 2018

P.C.

FIRST APPEAL NO. 423 OF 2003

1 On 21st November 2018, the following order was passed :-

“1 The record indicates that on 27th September 2018, this Court, after considering the fact that sufficient opportunity was given to the appellants, directed the appeal to be placed on 30th October 2018 for dismissal as the appellants had remained absent. Thereafter, on 30th October 2018, again at the request of the

appellants and by way of last chance, the matter was adjourned and kept today. Today, the advocate for appellant is not present in Court. Appellant Nos.8, 13 and 14 are present in Court and they state that their counsel Shri Anil Patil is not available today.

2 Only by way of indulgence, the matter is kept on 24th November 2018.

It is made clear that if the learned counsel for the appellant Nos.8, 13 and 14 does not appear or argue the matter on merits, the same shall stand dismissed for want of prosecution.”

2 Today, though the matter has been called out twice, there is no appearance on behalf of the concerned appellants. The learned counsel for the respondents is present.

3 The Appeal is dismissed for want of prosecution under Order XLI, Rule 17 of the Code of Civil Procedure, 1908.

**WITH
CIVIL APPLICATION NO. 3757 OF 2015
WITH
CIVIL APPLICATION NO. 4940 OF 2016
WITH
COURT RECEIVER'S REPORT NO. 463 OF 2016
WITH
CIVIL APPLICATION NO. 1566 OF 2017
WITH
CIVIL APPLICATION NO. 345 OF 2018
WITH
CIVIL APPLICATION NO. 346 OF 2018**

4 During pendency of the present litigation, this Court by order dated 9th February, 1984 in Appeal From Order No.460 of 1981 had directed the Court Receiver to take symbolic possession of the suit property and further directed the occupants to pay royalty to the Court Receiver. Thereafter, in

the present Appeal on 21st March 2005, this Court had directed the applicants who were in possession to submit necessary agency agreement and pay royalty to the Court Receiver. Thereafter, on 4th March 2015, this Court had made it clear that failure to pay arrears of royalty/royalty would entitle the Court Receiver to take possession of the suit premises. Further directions were issued to the Court Receiver on 1st August 2017 and 3rd August 2017. As the Appeal has been dismissed for want of prosecution, the Court Receiver is directed to take physical possession of the suit property and hand over the same to the respondent Nos.1 to 11-original plaintiffs in accordance with law. It is open for the Court Receiver to obtain necessary assistance from the concerned authorities including the local police authorities as directed by order dated 1st August 2018.

5 All pending civil applications stand disposed of in view of dismissal of the appeal.

(A.S. CHANDURKAR, J.)