

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

**CIVIL APPLICATION NO.250 OF 2016  
IN  
CIVIL APPLICATION NO.1140 OF 2015  
IN  
CIVIL APPLICATION NO.1293 OF 2013  
IN  
SECOND APPEAL NO.51 OF 2008  
IN  
CIVIL APPLICATION NO.98 OF 2008  
IN  
SECOND APPEAL NO.51 OF 2008**

Shri. Chandrakant Gulab Sasane & Ors. ....Applicants  
V/s.  
Smt. Radhabai Kisan More & Ors. ....Respondents

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Mr. P.B. Kakade for the Applicants.  
Mr. P.B. Gujar for Respondent No.1.  
Ms Rupa Bhawe a/w. Ms Divya Menon i/by M/s. Bhawe & Co. for  
Respondent No.2.

**CORAM : M.S. SONAK, J.  
DATE : 22<sup>nd</sup> FEBRUARY, 2018**

**P.C.**

1. These civil applications ultimately seek the restoration of Second Appeal No.51/2008, which came to be dismissed for default. The reason why there so many civil applications is the civil application seeking for restoration also came to be dismissed for default and consequently, further civil applications had to be taken out to seek restoration of such restoration applications.
2. The learned counsel for the respondents submit that this is an

appeal of the year 2008 and applicants have been grossly negligent in pursuing the matter. He submits that even the civil application seeking restoration were permitted to be dismissed for default repeatedly. He submits that despite success before the Appellate Court, they are unable to freely enjoy the fruits of the decree even though, they continue to be in possession of the suit property. They submits that no further indulgence may be shown to the applicants.

3. The learned counsel for the applicants however points out that sufficient cause has been shown in the civil applications taken out from time to time. He submits that the matter could not be attended with sufficient diligence on account of his personal age, health and the fact that his office premises were attacked by white ants leading to destruction of records. He points out that the building in which the office premises were located, were declared as dangerous for occupation and ultimately the premises were demolished. He points out that there are no malafides and the delay is not dilatory strategy.

4. The explanation furnished by the applicants and the learned counsel for the applicants cannot be said to be malafide or lacking any bonafide. It is true that there is some lapse on the part of the applicants.

5. However, taking into consideration the fact that the applicants, their advocates have been pursuing the matter though, not with the accepted decree of diligence, some consideration is required to be shown to the applicants. The circumstances narrated by the advocate for the applicants involving himself are also not irrelevant in the matter of this nature.

6. Therefore, upon due consideration of all the aforesaid circumstances, all the civil applications are allowed. The Second Appeal No.51/2008 is restored.

7. Accordingly, the civil applications are disposed of in the aforesaid terms.

8. Place the second appeal for admission on 03.04.2018.

9. The learned counsel for the applicants now undertakes to supply to the learned counsel for the respondents, an amended memo of appeal within a period of two weeks from today. The learned counsel for the applicants also agrees to furnish a list of citations of the judgments on which he proposes to place reliance to the learned counsel appearing for the applicants.

**( M.S. SONAK, J. )**