

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

913 CIVIL APPLICATION NO.13691 OF 2019
IN SA/32/2017

DATTU @ DATTATRAYA YESHWANT TODKARI AND OTHERS
VERSUS
SAKHUBAI DIGAMBAR TODKARI AND OTHERS

Mr. G. Y. Patil h/f Mr. V. B. Deshmukh, Advocate for the applicants

Mr. S. A. Wakure, Advocate for respondent Nos. 1 to 4

Mr. S. S. Gangakhedkar, Advocate for respondent No. 10.

CORAM : S. M. GAVHANE, J.

DATED : 19.12.2019

PER COURT :-

1. This application is filed to restore Second Appeal No. 32 of 2017 which was dismissed on 06/08/2019.

2. Issue notice to the respondents. Mr. Wakure learned counsel waives service of notice for respondent Nos. 1 to 4/original plaintiffs. Learned counsel Mr. Gangakhedkar, learned counsel waives service of notice for respondent No. 10.

3. With the consent of learned counsel appearing for applicants, respondent Nos. 1 to 4 and 10 application is taken up for final hearing.

4. Learned counsel appearing for the applicants/original defendant Nos. 1 to 5 submitted that he was not aware of the conditional order dated 17/07/2019 and on 06/08/2019 when he was present, the appeal was dismissed and further submitted that he is ready to work out the appeal and the same may be restored. He submitted that respondent Nos. 5 to 11 are the original defendant Nos. 5 to 11. Respondent Nos. 5 to 9 and 11 were served with the notice of appeal by paper publication, but they did not appear. Therefore, the interest of the present applicants is not adverse to said respondents. Notice of this application is not necessary to them.

5. Learned counsel appearing for respondent Nos. 1 to 4 opposed to grant the application on the ground that since 2017 the matter is prolonged by the applicants for one or the other reason and therefore appeal may not be restored.

6. Learned counsel appearing for respondent No. 10 submitted that the interest of the present applicants and respondent Nos. 5 to 11 is not conflicting and

therefore appeal may be restored and it may be heard on merits.

7. Considering the submissions made by the learned counsel appearing for the parties and the grounds mentioned in the application, it is just to restore the appeal and hear the same on merits, as the learned counsel for applicants states that he is ready to work out the matter. Application is allowed and appeal is restored in terms of prayer clause (B).

8. Put up the Second Appeal No. 32 of 2017 for admission on 16/01/2020.

[S. M. GAVHANE, J.]