

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

**CIVIL APPLICATION NO. 1511 OF 2019
IN
SECOND APPEAL NO. 63 OF 2015
WITH
INTERIM APPLICATION NO. 1 OF 2019**

Smt.Sushila Vijay Kumar Pol & Ors.	...Applicants/Appellants
vs.	
Mrs.Nirmala & Mangal Bajrang Gaikwad	...Respondent

Mr.Mangal Bhandari i/b. Mangesh Deshmukh for Applicants.
Mr.Rahul S. Kadam for Respondent.

CORAM : S.C. GUPTE, J.

DATE : 14 NOVEMBER 2019

PC. :

The civil application is for restoration of a second appeal, which was dismissed for default. The dismissal order was passed on 26 June 2019. The order was passed on the ground that the Appellant, who was present in court, had been seeking time to engage counsel and in spite of time being given to enable him to do so, there was no appearance on behalf of the Appellants.

2 It is submitted by the Appellants in support of their application for restoration of the second appeal that the Applicants being residents of Baramati were finding it difficult to keep watch on the matter; they had accordingly already handed over papers to the present advocate and were under an impression that he would attend the matter.

3 Considering the explanation tendered in the civil application, the Applicants/Appellants do not deserve to be non-suited, but to be put to conditions. It is in the interest of justice to recall and restore the second appeal, but such recall and restoration must come with payment of costs having regard to the conduct of the Applicants.

4 The civil application is, accordingly, allowed by recalling the order of dismissal dated 26 June 2019 and restoring the second appeal to file subject to the Applicants/Appellants paying costs of this application quantified at Rs.20,000/- to the Respondent. Such costs shall be paid within a period of four weeks from today and shall be condition precedent. The ad-interim stay of execution, which was operating in favour of the Appellants as of the date of the dismissal of the second appeal, shall also be restored. It shall, however, operate only till 3 December 2019. The second appeal to be placed for admission 3 December 2019. High on board.

5 Learned Counsel for the Respondent waives notice.

(S.C. GUPTE, J.)

Sanskriti
A. Thakur

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