

SAS

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.450 OF 2017

Parsuram Govind Chougule & Anr. ..Petitioners.

V/s.

Ramesh Kedari Chougule & Anr. ..Respondents.

Mr.Ditendra Mishra for the petitioners.

Mr.V.S.Kapse i/b. Amit Kapse for the respondent No..

CORAM : NITIN W.SAMBRE, J.

DATE : OCTOBER 16, 2019

P.C. :-

In a suit being S.C. Suit No.5214/2005 initiated by the petitioners pending on the file of City Civil Court, Mumbai, a Notice of Motion No.807/2014 for recalling the order of dismissal of the suit came to be allowed subject to payment of costs of Rs.5,000/-.

2. The said order passed on June 16, 2015 since was not complied with, the learned City Civil Court ordered closure of the proceeding. An application for recall also came to be dismissed. As such, this petition.

3. Considered the cause shown, in view of the law laid

down in *Rafiq and another V/s. Munshilal and another*¹ a litigant need not suffer because of the default of lawyer. Learned counsel for the petitioners has expressed his readiness in the matter and also assures that he will be diligent in attending the proceedings regularly. Statement is accepted.

4. The order impugned dismissing the suit is hereby quashed and set aside subject to payment of costs of Rs.5,000/-, to which the defendants in the suit will be entitled to withdraw. The costs be deposited within a period of four weeks from today.

5. The petition stands allowed in terms of prayer clause (b).

(NITIN W.SAMBRE, J.)

¹ A.I.R 1981 Supreme Court 1400