

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

**WRIT PETITION NO.8110/2019**

Prabhakar R. Vaidya since deceased thru his LRs-Sudha wd/o Prabhakar Vaidya & Ors.  
Vs.  
Smt.Devaki w/o Mamachand Agrawal.

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Office notes Office Memoranda of  
Coram, appearances, Court's orders  
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Madhur Deo, Advocate for petitioners.

**CORAM : A.S.CHANDURKAR, J.**

**DATED : DECEMBER 11, 2019.**

The challenge raised in the present writ petition is to the order passed by the appellate Court condoning delay and restoring the appeal preferred by the respondent under the provisions of Order XLI Rule 19 of the Code of Civil Procedure, 1908.

The learned counsel for the petitioners submitted that the appeal preferred by the respondent had been directed to be re-heard and decided in the light of the judgment in Writ Petition No.5504/2015 dated 10.04.2018. Since the petitioners sought eviction of the respondent on the ground of bona fide need, that appeal was directed to be decided within a period of six months from July 2018. According to the learned counsel for the petitioners, the respondent is interested in delaying the adjudication of that appeal and hence it was rightly dismissed in default by the appellate Court. However, the application for restoration of that appeal preferred by the respondent came to be allowed

by the impugned order dated 01.10.2019. He thus submitted that the impugned order is liable to be set aside.

After perusing the impugned order, it is seen that the proceedings in the appeal have been disposed by imposing costs of Rs.10,000/- on the respondent. Considering the reasons mentioned therein and the fact that the amount of costs have now been deposited with the appellate Court as informed, I am not inclined to interfere with that order. However, considering the directions issued in Writ Petition No.5504/2015, the appellate Court is directed to decide that appeal expeditiously and preferably by the end of **February, 2020**. The appellate Court shall not grant unnecessary adjournments to the parties. The appeal be decided on its own merits.

With these directions, the writ petition is dismissed. No costs.

**JUDGE**

Andurkar.