

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

**INTERIM APPLICATION NO. 1704 OF 2021
IN
FIRST APPEAL NO. 961 OF 2020**

Pradip Gajanan Rane

...Applicant

vs.

Sundari P. Shetty (since deceased) & Ors.

...Respondents

Mr.Saneep A. Bhagwal for Applicant in IA 1704/2021.

Ms.Sunanad Kumbhat with Mr.Kunal Khumbat, Ankita Manjrekar and
Priya Rai for Applicant in IA 1703/2021.

CORAM : BHARATI DANGRE, J.

DATED : 6 OCTOBER 2021

PC. :

1. The application has been taken out seeking for setting aside order dated 25 January 2021 passed by this court and requesting that the appeal may be listed for final hearing.

On 25 January 2021, the court recorded as under :

“1. On 19th January, 2021, it was brought to the notice of this Court that as the relief of injunction was sought by the appellant was only till 13th October, 2013, the appeal has become infructuous and therefore, it needs to be dismissed.

2. Today none appears for the appellants.

3. Learned Counsel appearing for the respondents submits that as the appeal has become infructuous in view of the aforesaid fact, it needs to be dismissed.

4. In view of the aforesaid submission, the appeal stands dismissed.

5. In view of the disposal of the appeal, pending applications, if any, also shall stand disposed of.

6. In view of the order passed by this Court on 20th September, 2011, the respondents are at liberty to take necessary steps.”

2. Counsel for the Applicant states that in support of his application, he has filed an affidavit on 24 August 2021. Perused the application and heard learned Counsel for the Applicant and Respondents.

The Applicant makes a statement to the effect that till February 2020, in terms of the order passed on 20 September 2011, the amount was deposited in this court. It is also stated that the appeal was made ready for final hearing and in fact, it was diligently prosecuted by learned Counsel, but in his absence on 25 January 2021 by recording as above, the appeal came to be dismissed. The reason for the absence of the advocate is sought to be explained in para 9 of the application and there is no reason to disbelieve the said explanation. In para 10, it is asserted that the appeal has not been rendered infructuous, since in the absence of the advocate representing the appellant, it could not be pointed out to the court and the court gathered an impression that it has been rendered infructuous and it is accordingly dismissed. On perusal of the application it can be seen that the Counsel was absent on two dates.

3. For the reasons stated in para 9 of the application, it deserve an indulgence and the order passed on 25 January 2021 deserve to be set aside for affording an opportunity to the Applicant to advance the submissions on merits. This is, however, subject to an assurance of the

Counsel for the Applicant that he will not further delay the hearing of the appeal and the respective counsel are in agreement that the appeal can be heard finally.

3. Interim Application No.1704/2021 is made absolute in terms of prayer clause (a). List the appeal for final hearing on 11 October 2021 at 2.30 p.m.

(SMT. BHARATI DANGRE, J.)