

Santosh

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

**INTERIM APPLICATION NO. 2833 OF 2021
WITH
INTERIM APPLICATION NO. 2441 OF 2021
IN
FIRST APPEAL NO. 326 OF 2019**

SANTOSH
SUBHASH
KULKARNI

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Anthony Britoo	...Applicant
In the matter between	
Anthony Britoo	...Appellant
Versus	
Raju Mogaria & anr.	...Respondents

Mr. V. R. Tripathi, for the Applicant/Appellant in both IA.
Ms. Kavisha Shah, for the Respondents in both IA.

CORAM: N. J. JAMADAR, J.

DATED : 11th OCTOBER, 2021

PC:-

IA/2833/2021

1. This application is moved to extend the ad-interim relief granted by order dated 20th September, 2019, in the nature of protection of the possession of the applicant – appellant as an agent of the Court Receiver.

2. By the said order, the application was directed to be posted on 8th November, 2019. It seems that the application was thereafter listed before the Court on a number of occasions. However, due to paucity of time, the application could not be taken up and the ad-interim relief was continued.

3. In the meanwhile, the appeal came to be dismissed by a self-operative order in view of the default on the part of the appellant to furnish the paper-book within the stipulated period. The applicant – appellant thus preferred Interim Application No.2441 of 2021 to set aside the dismissal order and restore the appeal to file. In the said application, by order dated 24th September, 2021, this Court extended the time to file paper-book by four weeks thence.

4. The learned Counsel for the respondents submits that since the appeal has yet not been restored to file, the ad-interim relief cannot be continued.

5. I am unable to accede to the aforesaid submission. The substance of the matter cannot be lost sight of. The extension of time to file the paper-book implies that once the paper-book is filed within the extended period, the appeal would stand restored to file. Moreover, after the grant of ad-interim relief, the matter was not listed before the Court and ad-interim was continued till 18th March, 2021.

6. In this view of the matter, to advance the cause of justice, it would be necessary to continue the ad-interim protection lest the appellant - applicant would suffer irreparable loss.

7. Resultantly, the application for setting aside the dismissal order and restore the appeal deserves to be allowed and the

appeal is required to be restored to file. Likewise, the application for continuation of ad-interim protection also deserves to be allowed.

8. Hence, the following order:

: O r d e r :

- (i) Interim Application No.2441 of 2021 stands allowed in terms of prayer Clauses (a) and (b).
- (ii) The dismissal order stands set aside.
- (iii) Appeal stands restored to file.
- (iv) The appellant shall file the paper-book within the time stipulated by the order dated 24th September, 2021.
- (v) Interim Application No.2833 of 2021 also stands allowed.
- (vi) There shall be ad-interim relief in the nature of protection of the possession of the applicant as an agent of the Court Receiver till the disposal of Civil Application No.1175 of 2019.
- (vii) The respondent is at liberty to file appropriate application to seek reliefs as regards the terms subject to which the applicant shall remain in possession as an agent of the Court Receiver.
- (viii) Applications stand disposed of.

[N. J. JAMADAR, J.]