

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

**INTERIM APPLICATION NO.16682 OF 2022
IN
SECOND APPEAL NO. 259 OF 2017**

Shri Vitthal Kalyanrao Choundgundi and Ors. ...Appellants/Applicants
vs.
Smt. Shubhangi Rajendra Gurav ...Respondent

Mr. Rohan Surve a/w Mr. Kunal Naik for the Applicants.
Mr. Abhaykumar Apte for the Respondent.

CORAM : S. M. MODAK, J.

DATE : 21th JULY, 2022

P. C. :-

1. Heard learned Advocate for the Appellants/Defendants and the learned Advocate for Respondent/Plaintiff.
2. The suit is filed by the Respondent for specific performance of agreement and the Defendants were directed to execute the sale deed. This order is confirmed by the First Appellate Court and the Defendant has preferred a Second Appeal. It was admitted on 7th September, 2017, after hearing both the sides. Even Substantial question of law was also framed.
3. The Appellants were directed to file private paper book. The paper book was also filed. Thereafter the Appellant was granted three weeks

Order modified as per speaking to minutes dated 11th August, 2022.

time to take steps against un-served sole Respondent by learned Registrar Judicial on 27th March, 2018. Lastly the conditional order of dismissal was passed by learned Registrar on 29th June, 2018 in case steps to serve sole Respondent were taken.

4. The Appellant came to know about dismissal of the Appeal when they got information from the executing Court about the proceedings of special Darkhast No. 15 of 2013 and accordingly the present Application is filed for setting aside the order passed by learned Registrar.

5. The Appellant is offering an explanation that, as the paper book was filed they have performed their obligation. There is also an explanation offered that the learned Advocate representing the Appellant at that time is elevated.

6. On behalf of the Respondent the prayer for restoration is opposed on the ground of negligent attitude and for not taking steps in time. Even though the Appellant was negligent for the fact and circumstance I am inclined to restore the Appeal.

7. It seems that when the Appeal was admitted, there is no remark that Respondent has waived the service after admission of the Appeal and probably for that reason, the matter must have been fixed for serving the Respondent. In that view of the matter the Appellant is justified.

8. However it is true that Appellant has not taken steps in time.

Considering the over all scenario, subject to payment of cost of Rs.10,000/- the Appeal is restored. Appellant to pay the cost to the Respondent within the period of three weeks. Subject to that, the Appeal is restored. The learned Advocate for Respondents waives notice. The Appeal is already admitted.

9. The parties are at liberty to move for early hearing of the Appeal in due course and that will be considered on merits. It is made clear that the Respondent has already filed Interim Application No. 2859 of 2020 for expeditious hearing. It is also restored and it be fixed for hearing on 11/08/2022. So also Civil Application No. 560 of 2017 for stay is also restored.

10. Stand over to 11/08/2022.

[S. M. MODAK, J.]