

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 9940 OF 2022
IN
FIRST APPEAL NO. 191 OF 2021
WITH
INTERIM APPLICATION NO. 1088 OF 2021
IN
FIRST APPEAL NO. 191 OF 2021**

Ashok Lalchand Jain & Ors	...Applicants
<i>In the matter between</i>	
Ashok Lalchand Jain & Ors	...Appellants
<i>Versus</i>	
Sitabai Dharmraj Dhivare & Anr	...Respondents

MrJD Khairnar , for the Appellant.
Mr Harshad Inamdar, for the Respondent.

**CORAM G.S. Patel &
 Gauri Godse, JJ.**
DATED: 12th September 2022

PC:-

1. There are three prayers in the Interim Application No. 9940 of 2022. The first is to condone a delay of one year and 50 days. The second is for a restoration of the Appeal along with its Interim

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Application and to accept a private paper book. On 1st April 2021, interim protection was granted by the Civil Judge Senior Division, Malegaon was continued until the next date.

2. The Appeal itself was also admitted by a separate order made on that date.

3. It seems that the Appeal stood dismissed because the order of admission of the Appeal and filing the private paper book of 1st April 2021 was a conditional order.

4. It is in these circumstances that we will condone the delay and restore the First Appeal to file.

5. However, given that this is a Suit for specific performance that was dismissed, and further, because of this long delay, we are not inclined to continue the previous ad-interim order. It simply cannot be that an Appellant allows such a delay to occur and then seeks the restoration of a status quo ante to the prejudice of the Respondent to the Appeal. If this application was to be accompanied with an offer of payment for substantial costs and to be paid immediately, we might have considered reinstating a modified or limited form of the ad-interim protection. But the ad-interim protection that the Appellants seeks now to reinstate is against the Respondents ownership property. What is sought is an injunction against the Respondent from dealing with her own property. It is not explained what, if anything, should be done for the intervening period of delay of one year and 50 days or why, in equity or in law,

the Respondent should once again be subjected to a continuance of that ad-interim order.

6. Last but not the least, such an ad-interim order when first granted put the parties in a position of status quo only until such time as the Court was able to hear the appeal itself. Such an order is therefore predicated on the Court being able to take up the appeal at the earliest possible date. That in turn is based upon the parties complying with their obligations and doing all that is necessary without delay. In the present case, the two orders of 1st April 2021 between them made it clear that the order of admission was conditional, and that the Appellant was required to file an Appeal paper book within one year. This is not a small or unreasonable period. The fact that this was during the Covid pandemic is not an argument that impresses us. It surely cannot be the suggestion that this High Court and its departments had altogether shut down from April 2020 onwards. Indeed, in this context, it is noteworthy that the 1st April 2021 order was itself passed during the pandemic. If the Appellant could obtain such an order at that time, we do not see how the Appellant can raise the ground or excuse of the pandemic not to comply with that very order.

7. For all these reasons we decline to continue the ad-interim relief.

8. The Interim Application for restoration is disposed of in these terms.

9. Private paper book is to be filed within two weeks. In default, the Appeal will stand dismissed; and this time, no application for restoration will be entertained.

(Gauri Godse, J)

(G. S. Patel, J)