

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8025 OF 2018

Gurukrupa Builders and Ors.

.. Petitioners

Versus

Shridhar Ramchandra Deo

(since deceased) through Lrs.

Mangalabai Shridhar Deo and Ors.

.. Respondents

.....

- Mr. S.M.Gorwadkar, Senior Advocate a/w. Mr. Purushottam G. Chavan for Petitioners

- Mr. Kayval P. Shah for Respondents

.....

CORAM : MILIND N. JADHAV, J.

DATE : DECEMBER 07, 2022.

P.C.:

1. Heard Mr.Gorwadkar, learned Advocate for Petitioners and Mr. Shah, learned Advocate for Respondents.

2. Perused the impugned order dated 29.09.2016 passed below Exh. 1 by the learned District Judge, Pune.

3. The Application seeking restoration of Civil Appeal No.356 of 2002 came to be dismissed in default on 21.02.2013. Mr. Shah has filed his affidavit-in-reply to oppose this application. The roznama dated 21.02.2013 is annexed to the said affidavit. Order for dismissal reads that Appellants remained absent whereas his Advocate was present. Further it records that an Application was preferred by the Appellants for adjournment which was rejected by the learned Trial

Court by passing the order “Appeal dismissed in default”. Further order was passed as “Application by Advocate of appellant rejected. Proceedings closed”.

4. The learned District Judge while considering the application, instead of restricting himself to the issue at hand ventured into an unchartered territory on merits which is uncalled for.

5. Mr. Shah submitted that the impugned order does not deal with the merits of the matter and it only deals with the evidence which was recorded for the purpose of restoration.

6. I have perused the impugned order and considered the said evidence and the findings returned by the learned District Court. The principle reason for dismissing the Application as appearing from the impugned order is attributable to the conduct of the Applicants which is contained in paragraph 14 of the said order.

7. There is another finding which refers to the casual and negligent approach of the Applicant also.

8. Be that as it may, the aforesaid two issues could have been dealt with adequately and after hearing the parties giving appropriate reasons, rather than dismissing the proceedings and rendering the Petitioners to suffer grave prejudice. Hence, I am inclined to allow the Petition, subject to imposition of costs on the Petitioners to the tune of Rs.5,000/- to be paid to the Kirtikar Law Library, High Court, Mumbai. Subject to the payment of cost and producing the receipt of

the same on record, the Appeal proceedings which came to be dismissed vide order dated 21.02.2013 shall stand restored to the record and file of the Appellate Court. Needless to state that subject to payment of costs, the impugned order stands quashed and set aside.

9. In view of the above directions, Writ Petition stands disposed of.

[MILIND N. JADHAV, J.]

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