

Sharayu Khot.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 19874 OF 2022

IN

CIVIL REVISION APPLICATION NO. 13 OF 2022

Vasant Krisha Gate (Since deceased)
Through his legal heirs & Ors.

...Applicants

Versus

Jagannath Gopal Kamath

...Respondent

Mr. Yashodeep Deshmukh a/w Ms. Sonali Pawar, J. Chotai i/by Pradip Patil for the Applicants.

Mr. Tushar V. Dahibawkar i/by M/s. Dahibawkar & Co. for the Respondent.

CORAM : R.I. CHAGLA J

DATE : 14 December 2022

ORDER :

1. By this Interim Application, the Applicants/Appellants have sought restoration of the Civil Revision Application No. 13 of 2022 along with Interim Application No. 19118 of 2022 and Interim Application No. 193 of 2022 by recalling the order dated 14th October 2022 passed in Civil Revision Application No. 13 of 2022.

2. The Applicants have in paragraph 3 mentioned the dates on which the matter has been listed and that there is default on the part of the Advocate of the Applicants as he had not appeared on the dates when the matter had been listed. There was also circulation sought by the Advocates for the Applicants. Circulation had not been granted. The Applicants have also stated that there was a matter before the executing Court which was simultaneously going on.

3. The Applicants have stated that their Advocate had circulated the matter on 7th October 2022, but the matter had not been listed on that date. When the matter was listed on 11th October 2022, the Advocate for the Applicant was appearing before the Small Causes Court, at Mumbai in the execution proceedings and was unaware of the matter coming up on that date.

4. The Applicants have further stated that the Advocate for the Applicants was unaware, when the order dated 14th October 2022 was passed and by which Civil Revision Application stood dismissed for want of prosecution.

5. The Applicants have given an explanation as to the delay

in filling the present Interim Application and which is on account of the Advocate for the Applicants being unwell since 4th November 2022. The Applicants have stated that due to inadvertence and *bona fide* mistake on the part of the Applicants, the instant matter came to be dismissed for non prosecution. Further, the Applicants should not be made to suffer on account of default on the part of the Advocate. Accordingly, the present Interim Application has been taken out.

6. The grant of relief sought for in the Interim Application is objected to by the learned Counsel for the Respondent. He has submitted that on several occasions, the Applicants had not appeared and this has been recorded in the orders passed by this Court. A last chance has also been given to the Applicants on 11th October 2022 and on the adjourned date, none appeared for the Applicants. Accordingly, the Civil Revision Application stood dismissed for want of prosecution. He has submitted that no satisfactory reason has been given in the Interim Application for restoration of the Civil Revision Application. Further, it is only stated that the Advocate of the Applicant was unwell since 4th November 2022 and that is after the order dated 14th October 2022 was passed by which this Court had dismissed the Civil Revision Application.

7. I have considered the submissions. In my view, the Applicants have provided an explanation as to the default on the part of the Advocate for the Applicants for non appearance on the dates mentioned in paragraphs 3(a) to 3(e) of the Interim Application. Though the matter had been circulated on 7th October 2022, it had not appeared on that date. Further, the Advocate for the Applicants was appearing in the lower Court in the execution proceedings when the matter had come up a few days later. Accordingly, the benefit of doubt is required to be given to the Applicants, as that they were unaware of the matter being listed on the adjourned date and by which last chance was given and thereafter, this Court dismissed the Civil Revision Application due to default on the part of the Applicants. There has been previous default on the part of the Applicants in appearing in this Court in the Civil Revision Application. Hence, restoration of Civil Revision Application would be subject to the Applicants paying costs of Rs. 10,000/-. Hence, the following order is passed. :-

- (i) Civil Revision Application No. 13 of 2022 is restored along with the Interim Application No. 19118 of 2022 and Interim Application No. 193 of 2022 by recalling

the order dated 14th October 2022 passed in Civil Revision Application No. 13 of 2022, subject to the Applicants paying costs of Rs. 10,000/- (Rupees Ten Thousand only) to the Respondent, which shall be paid within a period of one week from the date of this order.

(ii) In view of the ongoing Executing Court proceedings which would result in the Civil Revision Application being rendered infructuous upon its being restored, there shall be stay on further execution of the impugned judgment and decree, subject to the Applicants paying interim compensation of Rs. 5,000/- per month from January, 2022, till the next date when the Civil Revision Application shall be placed for admission.

(iii) Civil Revision Application shall be placed on 25th January 2023.

(iv) Interim Application is disposed of accordingly.

[R.I. CHAGLA J.]