

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.3682 OF 2021
IN RC/725/2016**

**RAJU ABDUL RAHMAN AND ANOTHER
VERSUS
MOHD. ASHFAQ MOHD. ISHAQ AND ANOTHER**

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Mr. Ameya N. Sabnis, Advocate for the Applicants.

Mr. P. S. Chavan, Advocate for Respondent No.2.

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CORAM : S. G. CHAPALGAONKAR, J.

DATE : 04th AUGUST, 2023.

PER COURT:-

1. By this application, the applicants seek restoration of Second Appeal dismissed by order dated 24.08.2016 passed by the learned Registrar (Judicial) of this Court.

2. The contention of the applicants is that because of some mistakes on the part of the Advocate clerk, the objections could not be removed within time, resulting into refusal of registration of the appeal. Lapse on the part of the applicants or his Advocate is not intentional. The learned Advocate appearing for the applicants has filed his affidavit in support of the contentions in the application.

3. Mr. Chavan, learned Advocate appearing for respondent no.2 submits that although the registration of appeal was refused, the applicants continued to make representations with the Revenue Authorities that their Second Appeal is pending

for consideration and protracted matter relating to the mutation entry moved by the respondent. He would submit that conduct of the applicants needs to be taken into account while considering the prayers in the application.

4. Having considered the submissions advanced, apparently the registration of the Second Appeal has been rejected on 24.08.2016 for non-removal of office objections. Parties are litigating for their rights in the immovable property. Perusal of the documentary evidence available on record do not show that there was intentional default on the part of the applicants. True that the applicants continued to make representations with the Revenue Authorities regarding pendency of the appeal, although it was not pending in view of the impugned order. However, that conduct itself cannot be used to unsuit the applicants. The application can be favourably considered subject to payment of cost. Hence, the following order:-

ORDER

- a. Civil Application is allowed in terms of prayer Clauses 'A', 'B', 'C' and 'D' subject to condition that the applicants pay cost of Rs.10,000/- to the respondents within a period of four weeks from today.
- b. On payment of cost and subject to removal of office objections, appeal be registered.
- c. Civil Application is disposed of.

(S. G. CHAPALGAONKAR)
JUDGE