

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

915 APEAL FROM ORDER NO.15 OF 2022

SUREKHA RAOSAHEB GITE AND ANOTHER
VERSUS
CHANDRAKALA TRIMBAK GHULE AND ANOTHER

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Advocate for Petitioners/Appellants : Mr. Bhavthankar V. V.
Advocate for Respondent No.1 : Mr. A. N. Nagargoje.
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CORAM : S. G. MEHARE, J.
DATE : 21.09.2023

PER COURT :-

1. Heard the respective learned counsel for the parties.
2. This is an appeal against the order of the learned District Judge-1, Majalgaon, passed below Exh.1 in Misc. Civil Application No.7 of 2016, dated 29.01.2022 rejecting the re-admission of the appeal dismissed for default.
3. The said application has been rejected on the ground that the appeal was pending for seven years and due to non-appearance of the appellants, it was dismissed. That shows that the appellants were not diligent to prosecute the appeal. Apart from this, present application No.7 of 2016 is pending before the Court since 2016 and on 25.01.2022, the counsel for the applicants argued the matter. It clearly shows that after gap of

5 to 6 years, this application was argued and this conduct of the applicants and their counsel shows that they were not diligent and they had no urgency.

4. Learned counsel for the appellants would submit that the Roznama, which he has placed before the Court shows that most of the time the Court was busy in other matters or on leave or the Court time is over. When the adjournments were sought by the counsel for the appellants, the Court had considered the requests and adjourned the matter. The record is self speaking that the appellants were interested to protract the hearing of the application for re-admission of the appeal. The First Appellate Court has erred in blaming the appellants for protracting the appeal.

5. Per contra, learned counsel for the respondent would submit that the conduct of the appellants reveals that they were protracting the trial to enjoy the immovable property. Hence, the impugned order is correct.

6. The reasons for rejection as discussed above contradicts with the Roznama, which shows that most of the time either the Court was busy in another matter or on leave or the Court time was over. Considering the fact, the Court is of the view that the parties should get the timely justice. The impugned

order itself shows that when the Court heard the matter, the arguments were advanced. The impugned order appears not in consonance with the facts of the case and law applicable. Therefore, it deserves to be quashed and set aside. Hence, the following order :

ORDER

- (i) Appeal is allowed.
- (ii) The order passed by the learned District Judge-1, Majalgaon, below Exh.1 in MCA.No.7 of 2016, dated 29.01.2022 stands quashed and set aside.
- (iii) M.C.A.No.7 of 2016 is allowed.
- (iv) The order dismissing the appeal for default dated 15.02.2016 is set aside. RCS.No.116 of 2006 is restored on its original number.
- (v) Both parties are directed to appear before the First Appellate Court on 11.10.2023.
- (vi) There shall be no adjournment from either side.
- (vii) Learned District Judge, Majalgaon is directed to hear the appeal and dispose of within two months from the date of the appearance of parties in trial Court.

(S. G. MEHARE, J.)

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