

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

WRIT PETITION NO.6308 OF 2011

SIDDI ISMAIL S/O SIDDI ABDUL KHADER AND ORS
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...
Mr. P. G. Godhamgaonkar, Advocate for the Petitioners.
...

**CORAM : SHARMILA U. DESHMUKH, J.
DATED : 07th FEBRUARY, 2023.**

PER COURT:-

1. The challenge in the petition is to the order dated 29.07.2011 passed in Miscellaneous Civil Application (RJE) No.23/2010, whereby the application for re-admission/restoration of appeal came to be dismissed.

2. Heard the learned counsel appearing for the petitioners.

3. It appears from the facts of the case that RCA No.9/2005 was instituted challenging the judgment and decree arising out of RCS No.236/1991, which came to be decreed in the year 2005. On 25.06.2010, when the appeal was kept for hearing, an application for adjournment came to be filed, which was rejected by the Appellate Court. Subsequently, an application for restoration of the appeal was filed, in which order is passed which is impugned in the present petition.

4. The Appellate Court on consideration of the record of the case has observed that, the suit had been decreed in the year

2005 and the appeal which has been preferred is not being proceeded diligently by the appellant. In the impugned order it is also observed that the appellants have filed a fresh suit in respect of the same subject matter and *status quo* order has been obtained. Considering the facts and the record of the case, the Appellate Court has rejected the application for re-admission/restoration of the appeal.

5. Learned counsel for the petitioners has not been able to demonstrate any sufficient cause for non-appearance on the date of hearing of the appeal and I do not find any infirmity in the discretion, which has been exercised by the Appellate Court.

6. For the reasons above, there is no merit in the writ petition. Writ Petition is accordingly dismissed.

(SHARMILA U. DESHMUKH)
JUDGE