

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE CIVIL JURISDICTION

**APPEAL FROM ORDER NO.82 OF 2023
WITH
INTERIM APPLICATION NO.1188 OF 2023**

Amol Tatoba Kamaldharne-Pujari
(Gurav) and Others

...Appellants

vs.

Ramchandra Anna Pujari (Gurav)
(Deceased, through Lrs) and Others

...Respondents

Mr. Balwant Salunkhe, for the Appellants.
Ms. Manisha Devkar, for the Respondents.

CORAM : N. J. JAMADAR, J.

DATE : MARCH 29, 2023

P.C.:

1. Heard the learned counsel for the parties.
2. The challenge in this appeal is to an order dated 3rd January, 2023 passed by the learned Additional Sessions Judge, Sangli in Civil Misc. Application No. 68 of 2022 whereby the application preferred by the appellants for restoration of the appeal which came to be dismissed for want of prosecution by an order dated 14th September, 2021, came to be rejected.
3. The appellants/applicants had preferred the appeal bearing R.C.A. No. 101 of 2012 being aggrieved by a judgment and decree passed in Regular Civil Suit No. 7 of 2006 dated 16th April, 2010. The said appeal came to be dismissed for default in appearance on 14th September, 2021.

4. The appellants preferred an application for restoration of the appeal primarily on the ground that on account of the situation which arose due to Covid 19 pandemic, they could not appear when the appeal was listed for hearing. By the impugned order the District Court was persuaded to reject the application on the ground that when the appeal came to be dismissed, lock down restrictions were lifted.

5. Evidently, the appeal came to be dismissed during the period the country was grappling with Covid 19 Pandemic in one form or other. Undoubtedly the prevalence of infection might have been varied. Yet, the learned District Judge could have taken a more liberal view of the matter. In any event, it does not appear that there was intentional default. Reason ascribed for non-appearance can not be said to be disingenuous.

6. Hence, to advance the cause of substantive justice, the appeal deserves to be allowed. However, since the decree impugned in Appeal No. 101 of 2012 was passed on 14th September, 2021, it may be expedient to put the appellants to terms.

Thus, the following order.

ORDER

1] The appeal stands allowed.

2] The impugned order dated 3rd January, 2023 stands quashed and set aside.

3] Civil Misc. Application No. 68 of 2022 stands allowed.

4] Appeal No. 101 of 2012 stands restored to file of the District Court subject to the appellants paying costs of Rs. 3,000/- to the respondents within a period of three weeks from the date of uploading of this order.

5] The appellants shall not seek adjournment.

6] The learned District Judge is requested to make an endeavour to dispose of the appeal as expeditiously as possible and preferably within a period of six months, from the date of appearance of the parties.

7] The parties shall appear before the learned District Judge on 17th April, 2023.

8] Ad-interim relief granted earlier shall continue to operate till the appeal appears on the board of the appellate Court.

(N. J. JAMADAR, J.)