

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

CIVIL REVISION APPLICATION NO.294 OF 2022

Kashiram @ Kashinath Nathu
Patil and others

.....Applicants

Versus

Mohammad Yunus Asgar Ali Faruqui
and others

.... Respondents

Mr. R.S. Datar, Advocate for the Applicants.

CORAM : SARANG V. KOTWAL, J.

DATE : 21st MARCH, 2023

P.C. :

1. In this Civil Revision Application, the Applicants have challenged the order dated 1.4.2022 passed by the Ad-hoc District Judge-2, Thane in Civil Misc. Application No.202/2021. Vide the impugned order, the application for restoration of Civil Appeal No.189/2016 pending before that Court was allowed and the Civil Appeal was restored to its original file subject to the payment of cost of Rs.10,000/- to the Applicants herein.

2. Heard Shri R.S. Datar, learned counsel for the Applicants.

3. Learned counsel for the Applicants, who were the original Respondents in that application for restoration before the District Court at Thane, submitted that the observations made in the order that the Applicants in that application were not served with the appeal are factually incorrect.

4. I have considered these submissions. I have also perused the impugned order. Originally the Respondents in this Civil Revision Application had filed First Appeal No.3111/2006 before this Court. Subsequently, because of the change in the pecuniary jurisdiction, the appeal was sent to the District Court at Thane. The impugned order records the further progress of that appeal and the necessity to issue fresh notice to the parties. The learned District Judge-2 at Thane has recorded that as per the bailiff's report the Respondents herein were not served with the summons. The order also shows that the appeal pending before the District Court i.e. Civil Appeal No.189/2016 was dismissed for default. However, since the record showed that the

Respondents herein i.e. the Appellants before the District Court were not served, the restoration application was allowed and the Civil Appeal was restored to its file with directions to pay costs.

5. Since the impugned order is passed on the bailiff's report showing that the Appellants before that Court were not served; in the interest of justice the Appeal needs to be heard. No prejudice would be caused to the present Applicants because of restoration of the Appeal. Therefore, in my opinion, the learned District Judge-2, Thane has not committed any error in passing the impugned order of restoration of the appeal. Therefore, I do not see any reason to interfere with the impugned order. Consequently, the present Civil Revision Application is dismissed.

(SARANG V. KOTWAL, J.)

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