

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

**INTERIM APPLICATION NO. 1620 OF 2024
IN
FIRST APPEAL NO. 1148 OF 1996**

Shri Nandkumar Pandurang More ... Applicants
(Since Deceased Thr. Lrs.)
1) Vaishali Nandkumar More And Ors.

Vs.

A. G. Sohanwala And Ors. ... Respondents

Adv. Viraj Shelatkar i/by Adv. Yogesh Birajdar, for the Applicants.
Adv. Seema Sarnaik, for the Respondent no. 5.

CORAM : KISHORE C. SANT, J.

DATE : 2nd APRIL, 2024

P.C.:-

1. This Application is filed for restoration of Interim Application No. 1 of 2019 that was filed for restoration of First Appeal, which was dismissed for non-prosecution by this Court by Order dated 29.08.2019, recording that for many dates none had appeared for the Appellant.

2. There is delay caused in filing this Application of 1472 days. For the reasons stated is that the Advocate who had appeared expired and thereafter there was no intimation about the appeal and this Application for restoration. Thereafter there was National Lockdown in view of Covid-19 and it is for this reasons no immediate Application could be filed.

3. The learned Advocate for the Respondent vehemently opposes the Application pointing out various orders making this Court to pass an Order dismissing the appeal for non prosecution. He submits that even after Order dated 29.08.2019, the Applicant was not at fault in filing the Application and taking steps. It is her submission that the premises is at a prime location there is already a finding that the present Applicant is occupying the premises unauthorizely and has raised some construction practically blocking one of the entrances of the building of the trust where many tenants are residing. She also further points out that the Respondent had informed the advocate for the Applicant about the date of some of the trustees in the year 2017 itself and still no steps were taken. She thus prays for rejection of the Application.

4. It is made clear that, if the Appellant fails to prosecute the further proceeding the same shall be liable to be dismissed in default.

5. Place the Appeal for final hearing on 18.06.2024.

6. It is made clear that there shall be no interim relief. Applicant to prepare and file paper-book and serve upon the respondent within 4 weeks.

7. Since the Appellant/Applicant is in a possession since 1979, it would be desirable to restore the Interim Application No. 1 of 2019 subject to cost. Hence the following order.

ORDER

- a) The Application stands allowed.
- b) Interim Application No. 1 of 2019 and Interim Application (St) No. 23450 of 2019 in First Appeal No. 1148 of 1996 stands restored subject to payment of cost of Rs. 50,000/-. The cost to be paid in the office of this Court within 4 weeks from today. After the amount is paid office to allow the respondent to withdraw the amount without any formal application.
- c) The delay stands condoned.
- d) Interim Application stands disposed of.

(KISHORE C. SANT, J.)

Note:- This Order is corrected as per Speaking to the Minutes of the Order dated 26th April, 2024.