

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

**INTERIM APPLICATION NO.6971 OF 2024**  
**IN**  
**FIRST APPEAL NO.419 of 2014**

Dinesh Rampyare Dube And Anr. : Applicants

**IN THE MATTER BETWEEN**

Dinesh Rampyare Dube And Anr. : Appellants

Vs.

The Municipal Corporation Of  
Greater Bombay And Ors. : Respondents

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Adv. V. K. Gupta, for the Applicants/Appellants.

Mr. Santosh Parad, for the Respondent/MCGM.

Adv. Henna P. Shah a/w Adv. Palak Ranka, for the Respondent No.4.  
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**CORAM : KISHORE C. SANT, J.**

**DATE : 20TH MARCH, 2024**

**PC. :**

1. Heard the learned Advocate for the parties.
2. This Application is filed seeking restoration of the First Appeal and Civil Application to its original status, by recalling order dated 23<sup>rd</sup> February, 2024 by which the Appeal was dismissed for default.
3. Learned Advocate for the Applicants submits that the

Appeal was on board dated 9<sup>th</sup> February, 2024. The Advocate was not keeping well and bed ridden. It is for that reason, he could not remain present before the Court. After recovery from the illness, he has checked the position and came to know that the Appeal is dismissed for default by order dated 23<sup>rd</sup> February, 2024.

4. He submits that the Appeal is pending since 2014, there is ad-interim relief in favour of the Appellant. Appellant has also paid the charges for paper-book in the City Civil Court on 15<sup>th</sup> September, 2023. He submits that the Appellant is very much desirous of prosecuting the Appeal and therefore he has also paid the paper-book of Rs.420/-. If the Appeal is not restored its original position, Appellant would suffer irreparable loss. He thus prays for restoration of the Appeal.

5. Learned Advocate for the Respondent No.4 stating that the Applicants are enjoying the ad-interim relief granted by this Court. They are interested in protracting the appeal, even the Interim Application is still not argued by the Applicant. The Applicant has to show due diligence when the matter was on board. She prays for

heavy costs in case the Application is allowed.

6. Learned Advocate Mr. Parad for Respondent No.1 also vehemently opposes the Application. He submits that on one hand the Municipal Corporation is not in position to take action of demolition because of the ad-interim order and on the other hand the Interim Application itself is not argued. He opposes the Application.

7. Considering the submissions and that the learned Advocate could not remain present on personal ground of illness this Court finds that the litigant should not suffer for non appearance of the Advocate for personal reason. Application therefore needs to be allowed. Looking to the fact that this is tenant's appeal, who is in possession of a shop premises though there is a decree against him, it would be desirable to allow the Application with some costs. Hence the following order.

### **ORDER**

- (a) Application is allowed, subject to payment of costs of Rs.10,000/- to be paid to the Legal Services Authority, High Court of Bombay within

period of two weeks from today.

- (b) The Office to restore the Appeal to its original status along with the Interim Application on producing the receipt of payment of costs.
- (c) The Application stands disposed of.
- (d) After the Appeal is restored, place the Civil Application No.1426 of 2012 for orders on 17<sup>th</sup> April, 2024.

**(KISHORE C. SANT, J.)**