



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.18560 OF 2022
IN
SECOND APPEAL NO.918 OF 2015

Rajaram Maruti Nikam (since deceased)
through LRs. Popat Rajaram Nikam and Ors ... Applicants.

In the matter between:

Shankar Rajaram Nikam and Ors. ... Appellants.

Versus

Bayadabai Pandurang Nikam and Ors. ... Respondents.

Ms. Shraddha Pawar, for the Applicants.

Mr. Pradeep Gole a/w Mr.Suraj Shejwal, for the Respondent
Nos.1A, 1B, 2, 3 and 4.

CORAM : SHARMILA U. DESHMUKH, J.

DATE : MARCH 06, 2024

P. C.:

1. Interim Application has been preferred seeking recall of the order dated 21st February, 2018, dismissing the Appeal for non-prosecution. Learned counsel appearing for the Applicant points out the pleadings in the Application for the non-appearance as well as for the delay which has been caused in preferring the present application.

2. Learned counsel appearing for the Respondents would

submit that the reasons which are pleaded are incorrect. He would further submit that this is a suit for partition and Respondents in whose favour concurrent finding have not been able to get their share in the partition. Although the pleadings in the Application made out a case of default on the part of the Applicants, it is clear from the order of 21st February, 2018, dismissing the Appeal that due to non-appearance of the Advocate for the Appellants on three occasions, this Court was constrained to dismiss the Appeal for non-prosecution. The litigants are agriculturists and cannot be made to suffer for the negligence or default on the part of their Advocate in attending the matter.

3. In view of the above, the order of 21st February, 2018 is recalled. Application is allowed and the Second Appeal is restored to file.

(Sharmila U. Deshmukh, J.)