

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.16787 OF 2023

IN

FIRST APPEAL NO.10 OF 2019

Mrs. Helena Louis Rodrigues

Since deceased through legal heirs

Mr. Clive Louis Rodrigues & Ors.

: Applicants

IN THE MATTER BETWEEN

Mrs. Helena Louis Rodrigues (deceased)

: Appellant

Vs.

M/s. Gundecha Builders & Ors.

: Respondents

Adv. Amey D. Nayak i/by Adv. Herbert Noronha for the Applicants.

Adv. Shihir Joshi i/by. Mr. Tejas Shah for the Respondent No.1.

CORAM : KISHORE C. SANT, J.

DATE : 19th JANUARY, 2024

PC. :

1. Heard the parties.

2. This Application is filed for restoration of the appeal which is dismissed by conditional order passed by this Court on 29th July, 2019 while admitting the appeal. This Court by the said order had directed the Appellant to prepare and file in the Court a private paper-book within a period of one year. The said period is expired on 28th July, 2020. It is stated in the application that from March, 2020 in view of Covid-2019 there was

national lock-down. The Appellant/Applicant lost track of the matter. The said period continued till August, 2021. There were multiple deaths in the family due to Covid-19 and for that reason also the paper-book could not be prepared and filed within a time. Now the paper-book is prepared and it is ready for filing in the Court within a period of four weeks from today.

3. Respondent vehemently opposed application by filing Affidavit-in-Reply. In the reply specific dates are given of passing of the order filing of the SLP before the Hon'ble Apex Court. The copies of the order passed in SLP are also placed on record. The learned Advocate has also relied upon the Judgments in the case of Basawraj and Another Vs. Spl. Land Acquisition Officer, reported in 2013 DGLS(SC) Page 672 and in the case of Isha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & others reported in 2013 DGLS(SC) Page 743. This Court has considered the reply and submissions of the Advocates. This Court finds that since the appeal is already admitted it needs to be heard. The parties should not be non-suited on technical grounds. Keeping in view this following order.

ORDER

- a) Application stands allowed.
- b) The First Appeal stands restored to its original status

subject to costs of Rs.20,000/- to be paid to the Respondent No.1. The private paper-book be filed within a period of four weeks from today.

- c) Application stands disposed of.

(KISHORE C. SANT, J.)