

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

SECOND APPEAL NO. 334 OF 2024

WITH

INTERIM APPLICATION NO. 15084 OF 2024

Digitally signed
by
HUSENBASHA
RAHAMAN
NADAF
Date:
2025.06.17
11:18:55 +0530

Babura Ganpati Mali and Anr.

... Appellants/Applicants

Vs.

Bhiku Sitaram Mali

... Respondent

Mr. Dilip Bodake a/w. Mr. Sharad Bhosale a/w. Ms. Shraddha Pawar,
Advocates for Appellants/Applicants.

CORAM : M.M. SATHAYE, J.

DATE : 16th June, 2025

P.C. :

1. Heard learned counsel for the Appellant who is original Plaintiff. Suit is dismissed on merits and the appeal is also dismissed.
2. Learned counsel Mr. Bodake submits that from bare perusal of the judgment of the Trial Court, it is clear that after the remand, neither the Plaintiff nor the Defendant had proceeded with the hearing of the suit and in fact the parties and their Advocates had informed the Court that since a comprehensive compromise is being considered, adjournment was sought. He submits that under law, when the Plaintiff was not proceeding with the suit, instead of dismissing the suit for default, hearing was proceeded on the basis of evidence already recorded and there is ex-facie error in the procedure adopted.

3. Perused the judgment of the Trial Court and the Appellate Court.
4. Issue notice to Respondents, returnable on 14/07/2025. In addition to Court notice, private notice is permitted. Affidavit of service be filed before returnable date.
5. Respondent is put notice that subject to time constraints, an endeavour will be made to finally disposal of the appeal, at the admission stage.
6. Appellant is at liberty to prepare the private paper book and serve it on the other side.

(M.M. SATHAYE, J.)