

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 783 OF 2025.

IN

FIRST APPEAL NO. 927 OF 2014.

Trevor Dsouza And Anr

...Applicants/Appellants.

Versus

Landmark Builders And Ors.

...Respondents.

Mr. C. K. Tripathi for the Applicants/Appellants.

Mr. Ankit Lohia a/w Ms. Sanaya Dadachanji & Ms. Akansha Yadav i/by Manilal Kher Ambalal & Co. for the Respondent Nos. 2 and 3.

Coram : Sharmila U. Deshmukh, J.

Date : February 4, 2025.

P. C. :

1. Interim Application has been preferred seeking recall of the conditional order dated 2nd September, 2014 directing filing of paper-book within a period of two years failing which the Appeal to stand dismissed for want of prosecution.

2. Learned Counsel appearing for the Applicant submits that the paper-book was not filed within the stipulated time due to default on part of the Advocate and the Advocate's office did not notice that the conditional order is come into operation particularly since the website status of the said proceedings was still showing the Appeal as listed for final hearing. He would further submit that it is only in January-2025 when the two Interim Applications were taken out for

return of document and for expediting the hearing of the First Appeal, the Advocate on record become aware of the conditional order in the present Application.

3. *Per contra*, learned Counsel appearing for the Respondent would oppose the Application and would submit that false assertion has been made in the pleadings that the case status was not updated as on 3rd January, 2025, whereas in November-2024 itself, the extract of the website status showed the Appeal as dismissed. He would further submit that the intent is to delay proceedings as the first Appeal has no merits. He submits that the Appellants are suffering *lis pendens* for last several years and no indulgence should be shown to litigant who has been negligent in prosecuting the Appeal.

4. I have considered the submissions and perused the records.

5. During the hearing of the earlier Applications, it was pointed out to the learned Advocate for the Applicant that the First Appeal itself has been dismissed due to the conditional order passed in the year 2014 by reason of which the present Application came to be filed seeking recall of the order. The First Appeal is of the year 2014 and the private paper-book was required to be filed within a period of two years. Obviously the requirement has to be met by the office of the Advocate on record and not by the litigant. For default on part of

the advocate on record the litigant cannot be made to suffer.

6. In light of the above, Interim Application is allowed. Private paper-book to be filed within a period of two weeks from today.

7. Interim Application is allowed. The order dated 2nd September, 2014 and 14th June, 2016 passed by the Registrar (Judicial-II) in the First Appeal stands recalled.

8. List the above First Appeal on the final hearing board of **7th March, 2025** (H.O.B.).

[Sharmila U. Deshmukh, J.]