

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 3627 OF 2025

IN

FIRST APPEAL (St.) NO. 1420 OF 1999

Damu Tukaram Arote
(since deceased, through LR's)

...Applicants.

In the matter between :

Damu Tukaram Arote

...Appellant.

Versus

The State of Maharashtra and Others

...Respondents.

Ms. Bhavana Khemani i/b Mr. Anil Ahuja for Applicant.
Mr. A. R. Patil, AGP for State.

Coram : Sharmila U. Deshmukh, J.

Date : 11th March, 2025.

P. C. :

1. Interim Application No. 3627 of 2025 has been preferred seeking recall of the order dated 4th September, 2001 dismissing the Appeal for non-prosecution and recall of order dated 3rd January, 2022 passed in Civil Application No. 3464 of 2015, which was an Application filed for restoration of First Appeal, which was also dismissed for non-prosecution.

2. Learned counsel for Applicant would submit that the matter was entrusted to the earlier Advocate, who failed to take necessary steps

and by reason thereof, the First Appeal came to be dismissed in the year 2001, which was not noticed by the Claimant as they were unaware of the legal procedure. She would submit that the Civil Applications were taken up in the year 2015, which came to be dismissed on 3rd January, 2022. She submits that in the interest of justice, the First Appeal be restored.

3. Mr. Patil, learned AGP would not oppose the restoration of First Appeal, but would submit that the State/beneficiary body should not be saddled with interest due to default on the part of Claimants.

4. From the record, it appears that the Claimants had suffered the dismissal of First Appeal in the year 2001 and the Civil Application was taken out in the year 2015, which indicates the knowledge of the Claimants about dismissal of Appeal and despite thereof, the Claimants were not diligent enough to ensure that proceedings are properly prosecuted. For the negligence and inaction on the part of Applicants-Claimants, the State/Beneficiary Body should not be saddled with interest under Section 28 of the Land Acquisition Act, 1894.

5. In light of the above, order dismissing the appeal dated 4th September, 2001 and the order dated 3rd January, 2022 passed in Civil Application No. 3464 of 2015 stands recalled after condoning the delay.

6. In event, the Appeal succeeds the Claimants will not be entitled

to claim the interest under Section 28 of the Land Acquisition Act, 1894 for a period from 4th September, 2001 till the date of passing of present order, i.e. 11th March, 2025.

7. Within a period of 3 weeks from today, the Claimants to file undertaking that they will not claim any interest for the period from 4th September, 2001 till 11th March, 2025.

8. List on **1st April, 2025.**

[Sharmila U. Deshmukh, J.]