



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION (ST) NO. 22823 OF 2025
IN
FIRST APPEAL NO. 342 OF 2023

Abubakar s/o Jan Mohammed (Since deceased
through Lrs.) Mrs. Nasimabanoo w/o Abubakar
and Ors.

...Applicants

Versus

Mohammed Yahya s/o Mohammed Ayub and
Ors.

...Respondents

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CHAVAN

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Ms. Shraddha Pawar i/b Mr. Nilesh Patil for the Applicants.
Mr. Vilas Jadhav i/b Mr. Suresh More for Respondent Nos. 1 to 4.

CORAM : M.M. SATHAYE, J.
DATE : 20th AUGUST, 2025

PC. :

1. Heard learned Counsel for the Applicants and learned Counsel for the Respondents.

2. This is an application for restoration of First Appeal which is dismissed for default on 14.02.2025. There is delay of 113 days in filing the application.

3. Inviting the Court's attention to additional affidavit filed by one of the Applicants, it is submitted that in the month of June 2024, wife of Applicants' Advocate was diagnosed with certain serious medical issue who was undergoing treatment including major surgery. It is submitted that the medical conditions remained serious till February



2025 and for the said reason the Applicants' Advocate could not attend the matter on the day it was dismissed for default. Medical papers are produced in support of the contentions. It is submitted that due to communication gap between the Applicants and their Advocate who was busy attending his wife's medical condition, they discovered about the dismissal of First Appeal in June 2025 and thereafter, the present application is immediately filed. It is submitted that the delay needs to be condoned and appeal needs to be restored for hearing on merits as decree is that of possession which will be executed and the challenge will become infructuous.

4. Learned advocate for the Respondents strenuously opposed the application, inviting the Court's attention to the affidavit-in-reply filed on behalf of Respondent Nos. 1 to 4. It is contended that this is third round of litigation, in as much as, initially the suit was decreed *ex-parte* and in appeal the matter was remanded back and thereafter, now again the decree of possession is passed which is impugned in the present Appeal. The earlier order on 09.01.2025 is pointed out indicating that earlier also this appeal was also dismissed for not filing private paper book and for restoration, again there was delay, and this Court granted indulgence. It is submitted that the Applicants are not attending the matter diligently, which has resulted into the Respondents suffering and decree of possession cannot be executed. It is further pointed out that for petty issues such as service of paper book, the Respondents are required to send reminders and therefore, the conduct of the Applicants is not worthy of any indulgence.

5. I have considered the submissions and perused the record.



6. Indeed the Respondents' rights are prejudicially effected because under impugned decree dated 13-17/12/2019, the Respondents have been held as owners of the suit premises and the present Applicants are directed to hand over the possession. The documents produced along with Affidavit-in-Reply also indicate that procedural aspect is not being looked after with due diligence. If persistent default appears from record, its effect cannot be permitted to be perpetuated, because the conduct does not seem to have improved. Even if the Advocate for the Applicants was not able to attend the matter due to his personal difficulties about wife's health, the period for which the Applicants' Advocate is stated to be occupied with medical conditions of wife is a long period from June 2024 till February 2025. The Court cannot keep taking lenient view about inability of Advocate in routine because valuable rights accrued to the other side and its execution keeps getting delayed. This is especially so when the decree is about possession, which keeps getting delayed. Therefore, the Applicants need to be put to terms.

7. Considering the aforesaid facts and circumstances and considering that the appeal was dismissed for default and dispute is not heard on merits, final indulgence needs to be shown, albeit with costs to the Respondents.

8. The application is allowed in the following terms.

(i) Subject to Applicants paying costs of Rs.25,000/- to Respondent No.1 (Mohd. Yahya s/o Mohd. Ayub) within a period of 4 weeks from today and subject to condition of removal of office objections within same time-frame, the application is allowed and the order dated 14.02.2025 is recalled and the appeal is restored for hearing on merits.



(ii) If the costs are paid and objections are removed, list the appeal for further hearing after 4 weeks.

(iii) It is clarified that if costs are not paid or office objections are not removed, the present application will be dismissed without further reference to the Court.

9. After the order was passed in the morning session, the matter was mentioned by learned Counsel for the Applicant in the afternoon session, who submitted that notice of this mentioning is given to the Advocate Mr. More and Mr. Jadhav for the other side. Copy of the whatsapp communication were placed on record. She requests that since the Appeal is restored, the interim relief granted in the appeal be also restored.

10. Subject to conditions on which the Appeal is restored, the interim relief granted on 15.02.2023 will continue for the period of four weeks.

(M.M. SATHAYE, J.)