

FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD.

Office Memoranda of appearance, Court's orders or directions and Registrar's orders.	Notes, of Court's orders or Registrar's	Office Coram,	Court's or Judge's orders.
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APEAL FROM ORDER NO. 126 OF 2013
WITH CA/12145/2011 IN AO/126/2013

RAMDAS SHIVRAM CHAUDHARY TH GPA SANJAY RAMDAS
CHAUDHARY
VERSUS
SOJABAI BABULAL CHAUDHARY

...
Advocate for Petitioner : Mr. Patil Mahesh H.
Advocate for Respondents : Mr. Choudhari N.L.

CORAM: T. V. NALAWADE, J.
DATED: 13th August, 2015.

PER COURT:

1. The proceeding is filed to challenge the order made by Principal District Judge, Dhule in Civil Miscellaneous Application No.46 of 2010. Both the sides are heard.
2. The application was filed by the present appellant for setting aside the order of dismissal for non-prosecution and for restoration of his Appeal bearing No.46 of 2006. The Principal District judge has rejected the application by holding that sufficient cause is not shown. It is observed that after restoration of the

appeal, the appellant had appeared before the Court on 16th October, 2009 and then on few occasions he was present and it cannot be said that the appellant had no knowledge that the matter was assigned to District Judge-2.

3. The aforesaid point was stressed by learned counsel for Respondent and he submitted that sufficient cause was not shown.

4. In the circumstances, like mentioned above, generally parties cannot be blamed. In appeal it is Advocate who is required to remain present and many times the blame goes to the Advocate. Though in strict sense it cannot be said that the appellant had no knowledge that the matter was assigned to District Judge-2, the fact remains that there is clear probability that the blame goes to his counsel.

5. To ascertain as to whether there is some case to fight out for the present appellant in the appeal this Court has gone through the judgment delivered by the trial Court in the suit filed by the present Respondent. The suit was filed for declaration of ownership due to adverse possession of agricultural land. The counter

claim was made by present Appellant that the property belongs to him and the property was mortgaged and so he is entitled to the relief of redemption of mortgage. To this counter claim, written statement was filed by the plaintiff and the plaintiff contended that there was the agreement of sale and she got the possession under agreement of sale. As the defendant could not prove the case of mortgage, the relief was not given to him. The trial Court has kept the point of entitlement of possession open. In view of these circumstances, this Court holds that there is some arguable case to the present Appellant. Nothing could have been achieved by the Appellant by remaining absent in appeal and by getting the order of dismissal. The plaintiff, present respondent, is in possession. In view of this circumstance this Court holds that the order of rejection of the application needs to be set aside for restoration of the appeal, filed by the present appellant. As the present Respondent is required to spend some amount in present proceeding, this Court holds that the order can be made subject to payment of some costs by the present Appellant to the respondent, plaintiff.

6. In the result, the appeal is allowed. The order of Principal District Judge, Dhule in aforesaid Miscellaneous Application is hereby set aside. The application filed for restoration is allowed. The matter, which was dismissed for non-prosecution is restored to its original number, subject to the payment of costs of Rs.3,000/- by the Appellant to the respondent, within four weeks. The amount of costs needs to be deposited in the District Court. If the amount is not deposited within four weeks from today, it is to be treated that the present matter is dismissed.

7. In view of final disposal of the appeal itself, the pending civil application stands disposed of.

[T. V. NALAWADE, J.]

Dt.13/08/2015
ans/126