

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**BENCH AT AURANGABAD****CIVIL APPLICATION NO. 10009 OF 2014
IN FCA/13/2012 WITH CA/10010/2014 IN FCA/12/2012****DEEPTI PUSHPADANT SAHUJI****VERSUS****PUSHPADANT VINOD SAHUJI**

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Advocate for Applicant : Mr. Gawali Amol K.

Advocate for Respondent: Mr. V. R. Dhorde

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**CORAM : S. V. GANGAPURWALA &
V. L. ACHLIYA, JJ.****DATE : 16th January, 2015****PER COURT :**

1. The applications are filed by the original appellant seeking restoration of the appeals dismissed for default vide order dated 23.09.2014. Mr. Gawali, the learned counsel for the applicant submits that the appeals came to be dismissed on 23.09.2014 on the ground that Advocate of the appellant and the appellant remained absent. The learned counsel submits that on 15.09.2014, the matter was adjourned to 23.09.2014. There were some differences between the applicant and her erstwhile lawyer and as such, on 21.09.2014, the applicant discharged her lawyer. The matter was not listed on the Board of 23.09.2014, as such the applicant was not aware of the matter being on the board on 23.09.2014 and did not remain present. The learned counsel submits that the note by the non applicant about the matter not appearing on board of 23.09.2014 and the matter will be placed before the Court dealing with the family court matters was given by the non

applicant to the office of the erstwhile lawyer who was already discharged on 21.09.2013. According to the learned counsel, appeals involve question about matrimonial rights of the parties. The applicant be given opportunity to contest the appeals on merits. The applicant is ready to abide by the terms and conditions and undertakes to argue the appeal on any date given by the court.

2. Mr. Dhorde, the learned senior counsel appearing for the non applicant strenuously contend that the matter was adjourned time and again. There were interim orders operating against the non applicant. Taking benefit of the same, the matter was being protracted at the behest of the present applicant. The matter was fixed for final hearing from time to time. Notices were given to the respondent, however the matter was not been argued. This Court has rightly dismissed the matter for default. The conduct of the applicant does not entitled her to get discretionary order from this court.

3. The learned counsel submits that on 22nd September, 2014 also, notice was served on the applicant through her counsel that the matter the matter will be listed on 23.09.2014, though not shown on the cause list. On 15.09.2014 itself, the next date 23.09.2014 was given. The proceeding sheet depicts the same. The proceeding sheet clearly shows that the matter is kept on 23.09.2014 at 2.30 p.m.

4. We have considered the submissions canvassed by the learned counsel for the respective parties.

5. The fact that the matter was fixed for final hearing is not disputed. It is also not disputed that the matter was on board on 15.09.2014 and on 15.09.2014, the parties were present before the Court. On 15.09.2014, the Court had adjourned the matter to 23.09.2014 at 2.30 p.m.

6. When the court had specifically passed a speaking order fixing the matter on 23.09.2014 at 2.30 p.m., then naturally the parties were aware of the next date. On 21.09.2014, it appears that the present applicant had discharged her erstwhile lawyer, as such, the applicant ought to have made alternate arrangement of engaging another counsel. It appears that the matter was not shown on the main board, which was published a week in advance. The matter, it appears, was not shown on the supplementary board, however, notice was served to the lawyer who was already discharged by the present applicant about the date. There appears to be communication gap between the applicant and the erstwhile lawyer who was served with the notice on 22.09.2014. In the light of that we are inclined to exercise the discretion, however, the applicant also deserves to be mulct with cost for not having made immediate arrangement for engaging another counsel and be prepared on 23.09.2014.

7. In the light of above, we pass the following order:

(a) The order dated 23rd September, 2014 dismissing the appeals in default stands recalled and the appeals are restored to the file on condition that the applicant pays cost of Rs.25,000/- in each appeal to the non applicant.

(b) The payment of cost shall be the condition precedent.

(c) The applicant shall pay cost on or before 28.01.2015.

(d) On payment of cost, place the matter before the Court dealing with the family Court appeals on 29.01.2015 so as to enable the Court to pass such further orders.

8. Civil applications disposed of.

(V. L. ACHLIYA, J.)

(S. V. GANGAPURWALA, J.)

JPC