

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2139 OF 2015
IN
FIRST APPEAL (ST). NO.22936 OF 2012**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.M.S.Singh for the applicant

Mr.O.P.Singh for the respondent

CORAM : K.K.TATED, J.
DATED : 17/07/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is preferred by defendant for restoration of Civil Application No.4340 of 2014 which was dismissed for default by order dated 9.1.2015 and Civil Application No.2915 of 2012 which was dismissed for default by order dated 14.3.2014.
- 3 The learned counsel for the applicant submits that applicant's earlier Advocate was arrested because of family dispute and he was in Jail. He further submits that even the earlier Advocate failed to appear on several occasions on his behalf. Hence, he decided to change the Advocate and appointed present Advocate to defend his matter.

He submits that in the interest of Justice this Hon'ble Court be pleased to allow the present Civil Application and restore First Appeal as well as Civil Application on board for hearing on its own merits. He submits that because of mistake on the part of Advocate, litigant should not suffer.

4 On the other hand, the learned counsel for the respondent plaintiff vehemently opposed the present Civil Application. He filed affidavit-in-reply dated 2.7.2015. Counsel for the respondent submits that applicant on one or the other ground is prolonging the present litigation. He submits that on earlier occasion also, First Appeal stand dismissed for default. Considering these facts, there is no substance in the present Civil Application and Civil Application be dismissed with costs.

5 I have heard both the sides at length. It is to be noted that because of mistake on the part of the Advocate, litigant should not suffer. In the present proceeding, applicant's earlier Advocate was arrested because of family dispute and therefore did not remain present in this court.

6 Considering these facts, I am satisfied that the applicant has made out a case for allowing this Civil Application but at the same time, applicant has to pay cost of Rs.10,000/- to the respondent original plaintiff within four weeks from today,

failing which Civil Application shall stand dismissed without referring back to the court. Hence, following order:

- a) Order dated 9.1.2015 in Civil Application No.4340 of 2014 and Order dated 14.3.2014 in Civil Application No.2915 of 2012 is recalled.
- b) Civil Application No.4340 of 2014 and 2915 of 2012 is restored on file for hearing on its own merits.
- c) Applicant to pay cost of Rs.10,000/- to the respondent or their Advocate within four weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.
- d) Civil Application is disposed of accordingly.

(K.K.TATED, J.)