

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

**CIVIL APPLICATION NO.1257 OF 2012
IN
FIRST APPEAL NO.1059 OF 2006**

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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Ms.Hansa Asher-Mehta for the applicant

CORAM : K.K.TATED, J.
DATED : 11/03/2015

PC:

- 1 Heard the learned counsel for the applicant.
- 2 Though respondents are duly served, no one appeared on behalf of them when the matter was called out.
- 3 This application is preferred by claimant for restoration of First Appeal No.1059 of 2006 which was dismissed in view of conditional order dated 12.01.2007 passed by this court directing applicant to pay bhatta charges within four weeks.
- 4 The learned counsel for the applicant submits that earlier Advocate failed and neglected to take appropriate steps for payment of bhatta charges. Hence, First Appeal stand dismissed. He submits that because of mistake on the part of advocate

litigant should not suffer. He submits that applicant has good chance of success in the present matter. The learned counsel for the applicant submits that if present Civil Application is not allowed, irreparable loss, harm and injury will be caused to the Applicant. He submits that the reason disclosed by the earlier advocate in his affidavit dated 2.12.2012 shows that because of mistake on the part of earlier advocate's clerk it remained on to comply the conditional order dated 12.1.2007. On the basis of these submissions the learned counsel for the applicant submits that this Hon'ble Court be pleased to allow the present Civil Application and restore the First Appeal No.1059 of 2006 on file.

5 Considering the submissions made by the learned counsel for the Applicant, the averments made in the Application and as no one appeared on behalf of respondents, I am satisfied that the Applicant has made out a case for allowing the present Civil Application. At the same time applicant to pay cost of Rs.5,000/- each to respondents within 8 weeks from today, failing which Civil Application shall stand dismissed without referring back to the court. Hence, following order:

- a) First Appeal No1059 of 2006 restored on file.
- b) Time is extended by four weeks from this order to comply order dated 12.01.2007 passed by this court (Coram: A.S.Oka, J.), failing which Civil Application shall stand dismissed without referring back to the court.
- c) If bhatta charges are paid within stipulated time as stated hereinabove, office is directed to issue notices to the respondents in First Appeal, returnable after 12 weeks.
- d) In addition to usual mode of service, applicant is directed to serve respondents in First Appeal by private notice either by registered post A.D. and/or by hand delivery and file Affidavit of Service to that effect.
- e) Applicant to pay a sum of Rs.5,000/- towards cost to each respondent within 8 weeks from today or deposit the same in the Registry of this court, failing which Civil Application shall stand dismissed without referring back to the court.
- f) Civil application stands disposed off accordingly.

(K.K.TATED, J.)