

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

**CIVIL APPLICATION NO.402 OF 2015
IN
CIVIL REVISION APPLICATION NO.206 OF 2006**

**M/s. T.A.A. Construction : Applicant.
Versus
The Kalyan Agricultural Produce Committee : Respondent.**

**Mr. Kishore M Jawle for the Applicant.
Mr. Kirit J Hakani a/w Ms. Reena Parmar for the Respondent.**

**CORAM : R. M. SAVANT, J.
DATE : 09th October 2015**

P.C.

1 The above Civil Application has been filed for restoration of the above Civil Revision Application which has stood dismissed for non-prosecution on account of the non-appearance of the learned Advocate for the Applicant on 26/03/2015. Whilst dismissing the above Civil Revision Application for default, the learned Judge has recorded that on an earlier occasion also the Civil Revision Application was dismissed for default on 02/07/2014 and restored it on 15/01/2015.

2 The reasons why the learned Advocate for the Applicant could not appear have been mentioned in paragraphs 2 and 3 of the Civil Application.

 The learned counsel for the Applicant states that it is in the said circumstances mentioned in the said paragraphs that he could not remain

present before the Court, resulting in the dismissal of the above Civil Revision Application.

3 The above Civil Application has been opposed to on behalf of the Respondent by filing affidavit in reply. In the said reply the dismissal of the Civil Revision Application on the earlier occasions has been referred to. However, in so far as the Civil Revision Application is concerned, it is required to be noted that none had appeared for the Respondent also on the day when it was dismissed for default and therefore it is not a case where the Respondent was represented on the said day, but on account of the absence of the learned Advocate for the Applicant, that the matter could not be proceeded with.

4 In my view, a final indulgence is required to be shown to the Applicant as the Applicant should not suffer on account of any act of the advocate. In that view of the matter the above Civil Application is required to be allowed and is accordingly allowed. The above Civil Revision Application is restored to file. Since the Respondent was not represented on day when the above Civil Revision Application was dismissed for non-prosecution, the Applicant to deposit the costs of Rs.5,000/- with the Maharashtra Legal Aid Fund. Payment of costs would be a condition precedent. The above Civil Revision Application to be taken on board only after the Applicant files evidence of payment of the said costs. In so far as the above Civil Revision

Application is concerned, all the contentions on merits are kept open. The above Civil Application is accordingly disposed of.

[R.M.SAVANT, J]

CERTIFICATE

Certified to be true and correct copy of the original signed Order.