

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.567 OF 2015
IN
CRIMINAL APPEAL NO.284 OF 2015

Earnest Healthcare Ltd. and another. ..Applicants
Versus
Mr. O.P. Verma and another. ..Respondents

....
Ms. Sunanda Kumbhat, for the Applicants.
Mrs. Anamika Malhotra, APP, for the State.
Mr. Aditya Chitale a/w. Debarti Nag, for Respondent No.1.
....

CORAM : A. R. JOSHI, J.

DATE : 22nd JULY, 2015

P.C.

1. Heard rival submissions on this application for restoration. Earlier vide order dated 6.4.2015 (Coram : Abhay M. Thipsay, J.) the Appeal bearing No.284 of 2015 was dismissed. In fact, earlier said appeal was admitted by the same Court vide order dated 24.2.2015 by granting leave to file appeal challenging the acquittal of the respondent. That time, the application for leave to file appeal was treated as appeal memo and was numbered accordingly being Appeal No.284 of 2015. Amendments were directed to be carried out within two weeks

and the matter was fixed for final hearing on 4.3.2015 high on board. Apparently this was so done for final hearing as in the appeal what is challenged by the appellant/applicant is the order of acquittal passed by ACMM, 37th Court dated 17.1.2011 in Case No.2/SS/2000. Apparently said order of dismissal was passed mentioning that the dismissal is in default and for want of prosecution and also closed under Section 258 of Cr.P.C..

2. Admittedly, the leave application was granted and appeal was admitted by this Court vide order dated 24.2.2015. In that order the name of the present Counsel for the present applicant is mentioned as Mrs.Sunanda R. Kumbhat with Ms.Krutika Sukhadia, Advocate for the applicant. It is the submission on behalf of the applicant in the restoration application that she had initially filed her vakalatnama on 9.2.2015 in place of the earlier Advocate Mr. Desai representing the applicant / appellant and the said changed learned Counsel also carried out the amendment as directed by order dated 24.2.2015. It is further submitted that though the matter was directed to be fixed on 4.3.2015 it did not so appear on board and only on 10.4.2015 it was learnt that the appeal is already

dismissed vide order dated 6.4.2015. It is further submitted that the board for 4.3.2015 was checked looking for the name of the new Advocate i.e. Mrs.Sunanda Kumbhat, however, that name could not be found and as such there was no available information to the present counsel to know that her matter is listed on board.

3. Counter to these arguments, learned Counsel for the respondent placed a copy of the board of 4.3.2015 on which day the appeal No.284 of 2015 is very well shown at Sr. No.2 but with name of the Advocate for the appellant as P. D. Desai. Thereafter the matter was placed on 6.4.2015, as on 4.3.2015 the Court was on leave. It is further submitted that till that time of 6.4.2015 no vakalatnama was filed by the Counsel Mrs. Kumbhat for representing the appellant in the appeal. He further stated that there are different modes of search for ascertaining whether a particular matter is on board and in which a particular Counsel is appearing. Instead of search on the Counsel / Advocate, the search on the appeal number would have revealed that the matter was fixed on 4.3.2015. Of course this could have been possible but always it would be the

practice of an Advocate to search for his name which would be rather more easy for him to ascertain his matters coming on board. In any way the order of dismissal was on account of non-appearance of anybody for the appellant on 6.4.2015. In the considered view of this Court though there were various ways and means available for the applicant to find out the date of his matter, the cause today mentioned can also not be ignored, more so when the order of dismissal of the appeal is for want of representation for the appellant.

4. In any event, the present application is required to be allowed and the matter is required to be restored so that the main issue between the parties can be adjudicated and not curtailing the right of any party only on technicalities. In the result, present application for restoration is allowed. Earlier dismissed appeal No.284 of 2015 is restored to file. By consent, same is stand over to 30th July, 2015 for final hearing.

(A. R. JOSHI, J.)

Deshmane (PS)