

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

**CIVIL APPLICATION NO. 3231 OF 2014
IN
FIRST APPEAL NO. 537 OF 2010**

Shri. Nitin Dinanath Shirkar & Ors. .. Applicants
V/s.
The International Airport Authority of India
& Ors ... Respondents

Mr. S. J. Chaurasia i/b Ashok Law Firm for the applicants.
Mr. Rajesh Kothari i/b Wadia Gandhi & Co. for the respondent nos. 1 & 2.
Mr. Birendra Saraf with Shama Mittal i/b Abhijit M. for respondent no.4.

**CORAM : K. K. TATED, J.
DATED : 13/02/2015.**

PC.:

. Heard learned Counsel for the parties.

2 The learned Counsel for the applicant filed affidavit of service stating that respondent no.3 is duly served.

3 This application is for restoration of First Appeal no. 537 of 2010, which was dismissed for default by order dated 26.08.2014.

4 The learned Counsel for the applicant submits that on that date the Advocate for applicant was held up in another matter. Thereafter, he made inquiry at 5.00 p.m.. At that time, he learnt that matter was dismissed for default. Thereafter, he has mentioned the matter before the Court on 27.08.2014 after giving notice to the contesting

respondents seeking restoration of the aforesaid First Appeal. At that time, learned Counsel for the respondent no.4 vehemently opposed the restoration. Therefore, this Court directed to take out appropriate application. Hence, he has filed this application for restoration of First Appeal.

5 The learned Counsel for the applicant submits that because of mistake on the part of the Advocate, claimant applicant should not be suffered. He submits that on 26.08.2014, the Advocate for applicant was held up in another matter. Hence, no one appeared on behalf of applicant. He submits that applicant has good chance of success in the present proceeding. He further submits that if present Civil Application is not allowed, irreparable loss and injury will be caused to the applicant.

6 On the other hand, the learned Counsel for the respondent no.4 vehemently opposed the present Civil Application. He submits that in the present proceeding the Apex Court by order dated 09.08.2010 directed to this Court to dispose of the First Appeal within four months from date of said order, in view of the urgency. He submits that thereafter, the respondent no.4 preferred Civil Application on 06.02.2012 for fixing early date of hearing of First Appeal. He submits that as and when the matter appeared on board, the learned Counsel for the applicant asked time i.e. on 14.05.2012, 19.07.2012, 26.08.2013 and 28.09.2013. He further submits that the above mentioned First Appeal was on board before this court for final hearing on 09.06.2014 and 25.08.2014. On that date, no one appeared on

behalf of applicant. Thereafter, the impugned order passed by this court on 26.08.2014.

7 The learned Counsel for the respondent no.4 submits that in view of above mentioned facts, the applicant failed to make out the case for restoration of First Appeal no. 537 of 2010, which was dismissed for default.

8 The learned Counsel for the respondent nos. 1& 2 submits that they are also opposing the present Civil Application and he adopts the arguments of learned Counsel for the respondent no.4.

9 Considering the submissions made by learned counsel for the applicant and averments made in paragraphs 4, 5 and 6 of civil application, I am satisfied that applicant has made out the case for restoration of First Appeal no.537 of 2010. At the same time, applicants have to pay Cost of Rs.25,000/- each to the respondent no.1 as well as respondent no.4 within two weeks from today, failing which Civil Application shall stand dismissed without referring back to the court .

10 Hence, the following order.

- a) Civil Application is allowed.
- b) The order dated 26.08.2014 is recalled.
- c) First Appeal no. 537 of 2010 is restored on file for final hearing.
- d) Applicant to pay cost of Rs.25,000/- each to the

respondent nos. 1 and 4 within two weeks from today, failing which civil application shall stand dismissed without referring back to the court .

e) If cost is paid within stipulated time as stated herein above, office is directed to place First Appeal at bottom of admission board for final hearing on 04.03.2015.

f) Civil Application is disposed of accordingly.

(K.K.TATED, J.)