

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

**CIVIL APPLICATION NO.424 OF 2015
IN
SECOND APPEAL NO.637 OF 1991**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
---	----------------------------

Mr.Rahul Walvekar for the applicant

Mr.Rajesh S. Patil for the respondent no.1

CORAM : K.K.TATED, J.
DATED : 02/09/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is for restoration of Second Appeal No.673 of 1991 which was dismissed for default by order dated 24.7.2014.
- 3 The learned counsel for the applicant submits that because of mistake on the part of Advocate, matter was 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 proceeding. He submits that if delay is not condoned and matter is not restored on board for hearing on its own merits, irreparable loss and injury will be caused to the

applicant. He submits that in the interest of justice, this Hon'ble Court be pleased to allow the present Civil Application.

4 On the other hand, the learned counsel for the respondent vehemently opposed the present Civil Application. Respondent filed their Affidavit-in-Reply dated 7.2.2015. Advocate for the respondent submits that when the matter was on board before this court on 21.2.2007 advocate for the applicant made a statement that matter be adjourned on the ground of settlement. He submits that it is also recorded in the said order that if matter is not settled on the next occasion, applicant has to proceed with the matter for final hearing.

5 Advocate for the respondent further submits that when the matter was on board on 7.3.2007 advocate for the applicant made a statement that it is not possible to settle the matter. Advocate for the applicant further shows his inability to proceed with the matter. Hence, this court passed order on 7.3.2007 and dismissed the appeal for non-prosecution. Thereafter, applicant preferred application for restoration and same was allowed. The learned counsel for the respondent further submits that in the meanwhile, applicant preferred Contempt Petition No.523 of 2010. That Contempt Petition was also dismissed for non-prosecution by

order dated 25.10.2012. He submits that applicant has not shown sufficient cause for non-appearance on 9.6.2014, 20.6.2014 and 8.7.2014 when the matter was called out for final hearing. He submits that applicant has not shown sufficient cause for allowing the present Civil Application and same be dismissed with costs.

6 I have heard both the sides. It is to be noted that in the present proceeding applicant in paragraph 2 of Civil Application specifically stated that because of mistake on the part of advocate, matter stands dismissed.

7 Considering these facts, I am of the opinion that litigant should not suffer because of mistake of the advocate. At the same time, applicant has to pay cost of Rs.20000 to the respondent or their advocate. Advocate for the applicant agreed to pay said cost within four weeks from today.

8 Statement is accepted.

9 Hence, following order is passed:

- a) Delay in preferring Civil Application is condoned.
- b) Order dated 24.7.2014 passed by this court is recalled and the Second Appeal No.673 of 1991 is restored on file for hearing on its own merits.
- c) Applicant either to pay respondent or deposit cost of Rs.20,000/- in the Registry of

this court within four weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.

d) Civil application stands disposed off accordingly.

(K.K.TATED, J.)