

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
CIVIL APPLICATION NO.1891 OF 2013
IN
FIRST APPEAL NO.898 OF 2010

Bashra Anwar Ahmed Ansari ...Applicant
V/s.
Najmuddin Abdul Gafoor Kazi & Anr. ...Respondents

Mr. Sunil Patel i/b. M/s. Sunil & Co. for the applicant.
Mr. B. P. Shukla for respondent Nos.1 and 2.

CORAM: K.K. TATED, J.
DATED : JANUARY 14, 2015

P.C. :

1. Heard the learned counsel for the parties. This Application is preferred by the original Defendant for restoration of the present appeal which was dismissed for default vide order dated 18/03/2011.

2. The Applicant, in paragraph 2 of the Civil Application given reasons that his Advocate was not present when the matter was called out. The learned counsel for the Applicant submits that because of the mistake on the part of the Advocate, the litigant should not suffer. He submits that on that day the Advocate for the Applicant was held-up in some other matter. Hence, none appeared on behalf of the Applicant on that day. He further submits that the Applicant has a good chance of success in the present matter.

3. On the other hand, the learned counsel for the Respondent vehemently opposed the present Civil Application. He filed Affidavit-in-Reply dated 03/12/2014. The learned counsel for the Respondent

submits that the Applicant has not shown sufficient cause for condonation of delay. He further submits that the Applicant has not given any reason as to why their Advocate was not present when the matter was called out before this court on 18/03/2011. On the basis of this submissions the learned counsel for the Respondent submits that there is no substance in the present Civil Application and same be dismissed with costs.

4. It is to be noted that because of a mistake on the part of an Advocate a litigant should not suffer. In the present matter, none appeared for the Applicant. These facts are stated by the Applicant in paragraph 2 of the Civil Application . Considering the reasons disclosed by the Applicant, I am satisfied that the Applicant has made out a case for allowing the Civil Application. At the same time, the Applicant shall pay cost of Rs.5000/- to the Respondent within four weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court. Hence, the following order:

- a) Order dated 18/03/2011 passed by this court is recalled.
- b) The first appeal is restored to file for hearing on its own merits.
- c) The Applicant to pay cost of Rs.5000/- to the Respondent or his Advocate within four weeks from today, failing which the Civil Application shall stand dismissed without further reference to the court.
- d) Civil application stands disposed off accordingly.

(K.K. TATED, J.)