

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

**CIVIL APPLICATION NO.112 OF 2015
IN
FIRST APPEAL (ST) NO.22852 OF 2013**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
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Mr.Shrishail Sakhare for the applicant

Mrs.M.R.Bhoir for the respondent

CORAM : K.K.TATED, J.

DATED : 01/07/2015

PC:

- 1 Heard the learned counsel for the parties.
- 2 This application is for restoration of Civil Application No.1440 of 2014 with First Appeal (ST) No.22852 of 2013 which was dismissed for default by order dated 5.5.2014 passed by this court.
- 3 The learned counsel for the applicant submits that because of mistake on the part of earlier advocate matter stand dismissed. He submits that his previous advocate failed to inform even the dismissal of application and First Appeal. He submits that when the applicant contacted earlier advocate on 24.11.2014 at that time, applicant

learnt that Civil Application as well as First Appeal stand dismissed for default. Hence, immediately, he obtained no objection from earlier advocate and appointed present advocate for filing present Civil Application. Hence, there is a delay in filing this application for restoration of matter. He submits that applicant has good chance of success in the matter. He submits that because of mistake on the part of advocate, litigant should not suffer. He submits that if delay is not condoned and matter is not restored, irreparable loss will be caused to the applicant.

4 On the other hand, the learned counsel for the respondent Corporation vehemently opposed the present Civil Application. She submits that applicant has not shown sufficient cause for condonation of more than four months in preferring the present Civil Application.

5 I have heard both the sides at length. In the present proceeding, because of mistake on the part of Advocate Civil Application as well as First Appeal stand dismissed for default. Litigant should not suffer because of mistake on the part of Advocate. Considering these facts, I am of the opinion that applicant has made out a case for allowing Civil Application but at the same time, applicant to pay cost of Rs.7500/- to the

respondent Corporation within four weeks from today. Hence, following order:

- a) Order dated 5.5.2014 passed by this court is recalled.
- b) Civil Application No.1440 of 2014 and First Appeal (ST) No.22852 of 2013 is restored on file for hearing on its own merits.
- c) Applicant to pay cost of Rs.7500 to the respondent Corporation 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.)