

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

A.O. No.64/2014

Smt. Geetabai Anil Pidurkar Vs. Ashok Pandurang Bhusari and others.

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

Court's or Judge's
Orders.

CORAM : Z.A. HAQ, J

DATE : 14th January, 2015.

Heard Shri Harish V. Thakur, the learned Advocate for the appellant, Shri Raju Dhoble, the learned Advocate for the respondent no.1 and Shri V.P. Dable, the learned Advocate for the respondent no.2. None appears for other respondents.

The appeal arises out of the order passed by the District Court rejecting the application filed by the appellants under Order 41 Rule 19 of the Code of Civil Procedure refusing to re-admit the appeal for hearing.

The appellant had filed Regular Civil Appeal No.109/1999 before the District Court which was dismissed in default on 3rd July, 2007. The appellant filed the application under Order 41 Rule 19 of the Code of Civil Procedure praying for re-admission of the appeal. The reasons given by the appellant in the application was that the Advocate representing the appellant could not attend the matter when it was called out, as he was busy in another Court.

Though the reason given by the appellant cannot be considered to be proper ground, considering the fact that the application filed by the appellant under Order 41 Rule 19 of the Code of

Civil Procedure was pending since 2008 was decided on 10th January, 2014 and considering the fact that the respondents have not brought on the record any wilful or deliberate negligence on the part of the appellant in prosecuting the matter, in my view, interests of justice would be sub-served by passing the following order:

- (i) The appeal is allowed.
- (ii) The impugned order is set aside.
- (iii) Regular Civil Appeal No.109/1999 is restored.
- (iv) The District Court to decide Regular Civil Appeal No.109/1999 on merits.
- (v) The appellant, the respondent no.1 and the respondent no.2 shall appear before the learned District Judge-1, Warora on 16th March, 2015 at 11.00 a.m. and abide by the instructions of the learned District Judge.
- (vi) The appellant undertakes to serve the copy of this order on the respondent no.4-Chief Officer, Nagar Parishd, Warora and produce the acknowledgment on the record of the appeal on the date of appearance.
- (vii) If necessary, the learned District Judge shall issue notice to the respondent no.04-Chief Officer, Nagar Parishad, Warora.
- (viii) The appellant shall pay costs of Rs. 2000/- to the respondent no. 1 and Rs. 2000/- to the respondent no.2 and produce the receipts of it on the date of appearance.

JUDGE

Ambulkar

