

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

(1)

CA NO.15743/2015

20 CIVIL APPLICATION NO. 15743 OF 2015
IN
FA/2194/2013

AMBADAS MOHAN KARPE
VERSUS
MAGAN NAMDEO KARPE AND OTHERS

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Advocate for Applicant : Mr.Gaikwad Ajit B
Mr. S.H.Panchal, h/f Mr. V B Garud, Advocates for R/1 To 4.
Mr. N B Suryawanshi, Adv., for R/7.

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CORAM : P.R.BORA, J.
Dated: March 31, 2016

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PER COURT :-

1. Vide the present application, the appellant / applicant is seeking restoration of the aforesaid First Appeal which has been dismissed in default vide order passed by this Court on 7th October, 2015. Learned Counsel appearing for the applicant / appellant submitted that on 7th October, 2015, the applicant / appellant's Advocate could not remain present as he was required to go to Shrirampur to attend funeral of father of his friend. Learned Counsel has, therefore, prayed for recall of the aforesaid order and to restore the appeal to its original file. Learned Counsel appearing for the respondents has opposed for accepting the request so made by the appellant / applicant. Learned Counsel submitted that the appellant / applicant was never interested in prosecuting the matter. Learned Counsel invited my attention to the observations made by this Court in the order dated 7th October, 2015, and pointed out that even on prior dates, the appellant / applicant has

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remained absent without any sufficient cause and, therefore, the Court was constrained to pass the order whereby the appeal has been dismissed in default.

2. After having considered the submissions made on behalf of respective Counsel appearing for the parties, it appears to me that the matter needs to be decided on merits. The reason which has been stated in the present application for non appearance of the Counsel for the applicant on 7th October, 2015, cannot be said to be false. It is also not the case of the respondents that it is false. Thus, it appears that for sufficient reason the learned Counsel could not attend the matter on the given date though it is true that some alternate arrangement could have been made by the learned Counsel. However, merely because that was not made, the party cannot be made to suffer. I am, therefore, inclined to allow the present application and hence following order:

ORDER

- a) The application is allowed.
- b) The order dated 7th October, 2015, stands recalled. First Appeal stands restored to its original file.

(P.R.BORA, J.)

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AGP/-