

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1209 OF 2015

Shri. Suresh Jingonda Patil

.....Appellant

V/s.

Smt. Alka Babasaheb @ Rapunjay
Patil and Ors.

.....Respondents

* * * * *

Mr. Gajanan Savagave, Advocate for the appellant.

Mr. Mahesh Vijay Rawool, Advocate for respondents no.1 to 3.

Coram :- Smt. R.P. SondurBaldota, J.

13th April, 2016.

P.C. :-

- 1). Admit. By consent of the parties, the appeal is taken up for hearing forthwith.
- 2). This Appeal from Order arises out of the order dated 18th March, 2014 by which the District Court dismissed the appellant's application at Exhibit-20 for restoration of Miscellaneous Civil Appeal No. 49 of 2013 dismissed for default on the very day. The impugned order is a short order running into 4 to 5 sentences. The Learned Judge observes that, the record indicates that the Advocate for the appellant had not taken any precaution when the matter came up before the Court for hearing and there was gross negligence on the part of the learned Advocate. Perusal of the rojnama, copy of which is annexed to the Memo of Appeal, shows that out of 15 dates of the appeal, the appellant and Advocate were

absent only on one date i.e. 16th January, 2014. In the circumstances, merely because the Advocate for the appellant was not present in the Court when the matter was called out, the lower Appellate Court ought not to have dismissed the appeal. Mr. Savagave, the learned Advocate appearing for the appellant points out from the application for restoration that the Advocate had reached the Court late on that date, as he had to visit a doctor.

2). Considering the facts of the case, it cannot be said that the appellant was negligent in attending to the proceedings. Hence, the Appeal from Order is allowed. The order dated 18th March, 2014 passed by District Judge-1, Jaysingpur is set aside. The application at Exhibit-20 is allowed. The Miscellaneous Civil Appeal No. 49 of 2013 is restored to file. The parties shall appear before District Judge-1, Jaysingpur, District-Kolhapur on 28th April, 2016.

(SMT. R.P. SONDURBALDOTA, J)