

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

***CIVIL APPLICATION NO. 519 OF 2015
IN
SECOND APPEAL NO. 379 OF 2007***

Vyankatrao Bhau Patil

... Applicant

v/s

Vithal Ramchandra Patil & ors.

... Respondents

Mr.Amit Sale for the applicant.

None present for the respondents.

Coram: N.M. Jamdar, J.

Dated: 12 August 2016

P.C.:

The civil application seeks to restore the second appeal which was dismissed on 10 December 2007. In the application, detailed reasons have been given and the circumstances in which the appeal was dismissed. It is stated that the appeal was preferred through the earlier advocate, who could not attend the matter and he subsequently expired. It is also stated that the Appellant was under impression that the appeal was being looked after by earlier advocate and it is only upon the death of the advocate when the new advocate was appointed to took search of the position of the matter, the

dismissal was noticed. On 8 July 2016, the learned counsel for the Respondents sought time to file reply on or before 29 July 2016. No reply is filed. The averments made in the application have gone uncontroverted. These averments constitute sufficient cause. The situation has arisen because of the death of the advocate who was representing the Appellant and for this situation the Appellant should not suffer.

2 The civil application is allowed in terms of prayer clauses (a) and (b), subject to the Applicant reconstructing the paper-book within a period of eight weeks from today, failing which the earlier order as regard the dismissal of the second appeal will stand restored. If the paper-book is constructed within the stipulated time, place the appeal on board for final hearing as per its turn and categorization.

(N. M. Jamdar, J.)