

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

***CIVIL APPLICATION NO. 564 OF 2015
IN
SECOND APPEAL NO. 928 OF 2005***

Laxman Dnyanu Musale

... Applicant

v/s

Smt.Sarubai Vitthal Sapkal
(since deceased, through legal heirs)

1. Ramchandra Kundalika Sapkal & anr.

... Respondents

Mr.Siddhesh Pilankar i/by Uday Warunjikar for the applicant.

Mr.Ganesh jadhav for the respondents.

Coram: N.M. Jamdar, J.

Dated: 24 June 2016

P.C.:

The application seeks restoration of the appeal which was dismissed by conditional order passed on 13 March 2006. The civil application was came up before this Court on 1 April 2015 and the ad-interim order operating in the second appeal was restored and the Appellant was directed to file private paper-book, which the Appellant has done. Learned counsel for the Respondents opposes. Reply is filed.

2 I have considered the rival contentions. The appeal was dismissed for non-filing of private paper-book, which should have been done by the advocate for the Appellant and the advocate for the Appellant should have approached this Court with diligence when the appeal was dismissed. However, if the appeal is not restored, the litigant who has little to do for preparation of private paper-book, will suffer.

3 Considering the facts and circumstances, equities can be balanced by directing the Appellant to pay cost to the Respondents. Accordingly, subject to the payment of cost of Rs.10,000/- in toto to the Respondents within a period of four weeks from today.

4 The civil application is accordingly allowed in terms of prayer clause (a). Delay in filing the second appeal is condoned.

5 Place the appeal on board for final hearing as per its chronological order, considering that the appeal is of the year 2005.

6 The ad-interim order, if any, operating in the second appeal will continue till the disposal of the appeal.

(N. M. Jamdar, J.)

