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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CIVIL REVISION APPLICATION NO.172 OF 2015

Rajendra s/o Ramdas Moze,
Age: 40 years, Occu: Agril.,
R/o. : Warad (B), Tq. Bodwad,
Dist. Jalgaon

..APPLICANT

VERSUS

1. Smt. Devkabai w/o Sitaram Bawaskar,
Age: 60 years, Occu: Labour
2. Bhagwan s/o Sitaram Bawaskar,
Age: 40 years, Occu: Labour
3. Laxmi Sitaram Bawaskar,
Age: 35 years, Occu: Labour
4. Soni Sitaram Bawakar,
Age: 37 years, Occu: Labour,

All R/o. Jai Walmik Tekadi,
Samtanagar, Opp. Mahabal Colony,
Jalgaon, Dist. Jalgaon

..RESPONDENTS

Mr S. B. Bhapkar, Advocate for applicant;
Mr R. M. Gaikwad, Advocate holding for Mr M. L. Wankhede, Advocate for
respondent No.1

CORAM : N.W. SAMBRE, J.

DATE : 20th June, 2017

ORAL ORDER

The present applicant-original plaintiff instituted Regular Civil Suit No.136 of 2001 in the Court of Civil Judge Junior Division, Bhusawal for specific performance and injunction.

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2. The aforesaid suit came to be dismissed on 18th November, 2002. Feeling aggrieved, the applicant preferred Regular Civil Appeal No.84 of 2003. In the said appeal, as the applicant-plaintiff had not taken steps for almost seven years for effecting service on the respondent-defendant therein, the learned lower appellate Court dismissed the appeal for want of prosecution on 30th January, 2010.

3. Civil Misc. Application No.209 of 2014 was moved for restoration of the said appeal, which came to be dismissed on 24th March, 2015 by the learned District Judge, Bhusawal. Thus, the present revision.

4. Learned Counsel appearing on behalf of the applicant submits that in the application for restoration, the legal representatives of original defendant were brought on record. The non effecting of service to the defendant was not within the control as the steps that were required to be taken, was that of paying Bhatta and furnishing correct address. He submits that for said compliance the present applicant cannot be termed as casual as he was not properly advised. According to him, the applicant be put to reasonable conditions and the appeal be restored.

5. Per contra, learned Counsel appearing on behalf of respondent No.1 opposed the claim on the ground that the approach of the present applicant in the suit and appeal was too casual. According to him, since no reason whatsoever is furnished in the application for restoration, the learned District Judge has rightly rejected the application for restoration.

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6. Having considered the rival submissions, it is required to be *prima facie* observed that the applicant was negligent in pursuing his appeal as he had not taken steps for almost seven years for effecting service on the respondent to the said appeal. However, it is to be noted that within a reasonable period he applied for restoration of the appeal. Though the application for restoration is not very conveniently worded, still looking to the fact that the applicant has a statutory right to prefer and pursue an appeal, in the interest of justice, this Court is inclined to grant an opportunity to the applicant, subject to following conditions:-

(a) The applicant shall deposit costs of Rs.15,000/- before the learned lower appellate Court within a period of eight weeks from today. If such costs is deposited, the respondents will be entitled to withdraw the same.

(b) The order of dismissing the appeal and the order of rejection of the application for restoration are set aside, subject to compliance of above referred condition.

(c) If the costs as ordered above is not deposited, this order be treated as recalled and for negligence noted herein above, civil revision application be treated as rejected.

Civil Revision Application stands allowed in above terms.

(N.W. SAMBRE, J.)