

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

939 CIVIL APPLICATION NO. 10478 OF 2013
IN FA/846/2004

DNYANESHWAR NARHARI VEDPATHAK
VERSUS
MALLU BHAGWAN KOLI AND OTHERS

...

Advocate for Applicant : Halkude S. S.

Advocate for respondent no.3 : Mr. Kadethankar A. B.

Advocate for respondent no.6 : Mr. S. R. Bodade

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CORAM : P.R. BORA, J.
DATE : 30-06-2017.

P.C. :

1) The present application is filed for restoration of First Appeal No. 846/2004. The aforesaid appeal was dismissed by this court vide order dated 29/10/2004 in default. Learned Counsel appearing for the applicant submits that at the relevant time since he missed noting down the date which was fixed for admission of the said appeal, he did not remain present and consequently the said appeal was dismissed in default. Learned Counsel submits that for many days, the said fact could not be noticed by him. Learned Counsel submits that the appellant has very good chance of success in the appeal and in such circumstances, merely because of inadvertence on the part of his Counsel the appellant should not suffer. Learned Counsel therefore, prayed for setting aside the order of dismissal in default and to restore the appeal to its original file.

2) Mr. S. R. Bodade, Learned Counsel for respondent

no.6 has opposed for condoning the delay stating that huge period of 3179 days has not been properly explained. Learned Counsel, in the alternative, submitted that if the application is allowed the appellant shall be disentitled for the interest of the entire period of 3179 days if he succeeds in the appeal. Learned Counsel for the applicant was prompt in submitting that he has instruction from the applicant to waive the interest of the aforesaid period of delay on the enhanced amount of compensation.

3) In view of the submission so made, the following order is passed.

ORDER

- i) The Civil Application is allowed.
- ii) The delay caused in filing the restoration application is condoned.
- iii) The First Appeal No. 846/2004 stands restored to its original file.
- iv) It is clarified that in the event of success of the appeal, the appellant shall not be entitled for any interest of the period of 3179 days on the enhanced amount of compensation.
- v) Civil Application stand disposed of.
- vi) Copy of this order be placed with the papers of appeal.

**(P.R. BORA)
JUDGE**