

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
918 APEAL FROM ORDER NO. 52 OF 2017

ABHIMAN BARIK MALI
VERSUS
MADHUKAR NAMDEO MALI AND OTHERS

...

Advocate for Petitioner : Mr. Savale Amit S.
Advocate for Respondents No. 1 to 3 : Mr.D.M. Pingale.

CORAM : K. L. WADANE, J.

DATE : 13th December, 2017

ORDER:

1. With the consent of both parties, taken up for final hearing.

2. Heard Mr. Savale, learned counsel for appellant and Mr. Pingle, learned counsel for respondents No. 1 to 3.

3. Learned counsel for the appellant submits that the appellant had filed suit for perpetual injunction against the respondents, which came to be dismissed. Against which the present appellant preferred Regular Civil Appeal No. 32/2011, same was also dismissed in default. For its restoration appellant has filed Civil Miscellaneous Application No. 32/2016, which is dismissed by the Ad-hoc District Judge-1, Shahada, District Nandurbar, on the ground that inspite of sufficient opportunities advocate for the appellant/

applicant remained absent, ultimately Civil Miscellaneous Application No. 32/2016 was dismissed.

4. Mr. Savale, learned counsel for the appellant produced on record copy of Roznama of Regular Civil Appeal No. 32/2011, since beginning to its dismissal in default. It is marked as Exhibit 'X' for the purpose of identification. On perusal of the same it appears that, the appeal was presented on 16.04.2011 and it was adjourned from time to time on the request of either of the parties. Lastly the appeal was listed for final hearing on 19.10.2016 and it was adjourned for four times and posted on 07.12.2016. From the Roznama it appears that, the appellant was present in person however his advocate was absent. It is contended that, on 07.12.2016 the advocate of the appellant was engaged in another court, therefore, he was unable to attend the proceedings before the First Appellate Court.

5. On perusal of the record, I am convinced that the present appellant was prevented from certain causes to conduct the appeal. Since there was no fault on the part of the appellant, I am of the opinion that the impugned order can be set aside by imposing certain costs to be paid to the respondents. Learned counsel

for the respondents submits that, in case, Regular Civil Appeal No. 32/2011 is restored, then it may be expedited.

6. In view of the above, A.O. No. 52/2017 is allowed.

7. Order passed by Ad-hoc District Judge—1 Shahada, District Nandurbar, in Miscellaneous Civil application No 32/2016 on 23.06.2017 is set aside and Regular Civil Appeal No. 32/2011 is restored to its original number and stage, subject to payment of costs of Rs. 5000/- to be paid to the respondents within a period of four weeks.

8. Learned First Appellate Court is directed to dispose of the Regular Civil Appeal No. 32/2011 as early as possible, preferably within a period of six months from the appearance of the parties.

9. Parties are directed to appear before the First Appellate Court on 08.1.2018, for which no separate notices are necessary.

10. A.O. is disposed of in above terms.

(K. L. WADANE, J.)

mkd