

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1376 OF 2016
IN
SECOND APPEAL NO.265 OF 1991**

Nivrutti D. Patil	...Applicant/Appellant
Versus	
Shankar K. Bhagat/Patil	... Respondent

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Mr. Sachin Chavan, Advocate for the Applicant/Appellant.
Mr. Sarthak Diwan i/by A.M.Kulkarni, Advocates for the Respondent.

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CORAM : S.C.GUPTE, J.

DATE : 10 FEBRUARY 2017

P.C. :

. This Civil Application seeks recall of the dismissal order passed by this Court in the Second Appeal on 11.2.2014 for want of prosecution. There is a delay of 749 days in taking out the present Civil Application. The delay is sought to be explained by submitting that the matter was not noticed on the final hearing board by the learned Advocate for the Applicant/Appellant, since he was not having many matters on the final hearing board. It is submitted that even the Applicant/Appellant lost track of the matter due to some family reasons. It is submitted that the Applicant/Appellant for the first time came to know about the dismissal order when he received a notice from the executing Court. It is an admitted position that the Second Appeal was dismissed on earlier occasion also. Even this Civil Application appears to have been dismissed on one occasion for default of appearance. This conduct hardly qualifies for condonation of

delay and restoration of the Second Appeal. However, in the overall facts and circumstances and considering the interest of justice, delay is condoned and the Civil Application is allowed by recalling and setting aside dismissal order of 11.2.2014, however, subject to payment of costs quantified at Rs.15,000/-. Cost to be condition precedent and will be paid within a period of two weeks from today. Subject to payment of costs, the Second Appeal to appear on board for final hearing in the week commencing from 27.2.2017.

(S.C.GUPTE, J.)