

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

APPEAL FROM ORDER NO. 652 OF 2009

Shri Vitthal Bapu Dhangar

...Appellant

Versus

Appu Bhujinga Dhangar (D.H.) & Ors.

...Respondents

.....

Mr.Sandeep S.Koregave for the Appellant.

Mr.Rahul S. Kulkarni for Respondent Nos. 2 to 5.

.....

CORAM: MRS.MRIDULA BHATKAR, J.

DATED: SEPTEMBER 25, 2017

P.C. :

1. This Appeal from Order is directed against the order dated 16.03.2009 passed by the learned District Judge, Jaysingpur, thereby dismissing the application for restoration of Regular Civil Appeal No. 71 of 2004 for default on 19.04.2006.

2. The appellant/original plaintiff has filed a suit for possession and it was dismissed on 24.07.2000 by the trial Court. Against the said order, the appellant has filed Regular Civil Appeal No. 364 of 2000 before the learned District Judge, Kolhapur. The Regular Civil Appeal

was admitted and fixed for arguments. The appellant was present, but his advocate was absent on two dates and, therefore, the learned District Judge has given the next date. On that day also, advocate for the appellant did not remain present in the Court to argue the matter, but the appellant was present in the Court. When the appeal was dismissed for default, the appellant filed an application for restoration on 05.06.2006. In the said application, the appellant has given reasons for the absence of his advocate. In the year 2006, the advocate for the appellant was the Vice President of the District Bar Association, Kolhapur and he was required to go to Pune and Mumbai for getting sanction for the construction of new court building in Kasaba Bawada, Kolhapur. He was cross examined by the learned District Judge. The learned District Judge did not appreciate the reasons given by the appellant for absence of the advocate and dismissed Civil Misc.Application No. 20 of 2006. Being aggrieved by the said order, this Appeal is filed.

3. Learned counsel for the appellant submits that the appellant had filed Regular Civil Appeal No. 364 of 2000 before the learned District Judge, Jaysingpur. Notices were issued and it was numbered as Regular Civil Appeal No. 71 of 2004. He further submits that the advocate for the appellant/plaintiff could not remain present at the time of hearing of

the appeal, but the appellant was present. He relies on the affidavit filed by the concerned advocate to substantiate the reasons of the absence. He further relies on the judgment in the case of *Ashok Ravji Vadodriya vs. Municipal Corporation of Greater Bombay*, reported in *2003 (3) Mh.L.J. 1003*, wherein this Court has held that the party cannot be made to suffer merely because their chosen advocate defaulted.

4. Per contra, learned counsel for respondent nos. 2 to 5 while opposing this appeal, has submitted that the respondents are in possession of the suit premises since 1952 and they are dragged in the litigation in the year 1982. He further submitted that conduct of the advocate for the appellant/plaintiff is very objectionable, as he was given time twice with specific warning that the Appellate Court has kept the matter for hearing, but he failed to remain present and argue the matter. He further submitted that the reasons given in the application for adjournment are also contradictory. He further submitted that the consequences of the restoration of the appeal are grave for the respondents/original defendants, who are facing litigation since 1982.

5. Heard submissions. Perused the impugned order, judgment in the case of *Ashok Ravji Vadodriya (supra)* and the relevant documents. Undoubtedly, the Appellate Court has given sufficient opportunity to

the appellant to bring his advocate, however, his advocate did not remain present on the date, when appeal was specifically kept for hearing. It cannot be said that the learned Judge has committed any wrong in passing such order of dismissal, however, the learned Judge has erred in making observations that it is needless to say that if advocates remains absent before the Court to conduct the matter fixed for hearing, the work of disposal of the Judge affects badly. The affidavit filed by Advocate Rajendra B.Patil of Kolhapur is required to be given due weightage. He has mentioned that in the year 2006, he was working as a Vice President of District Bar Association, Kolhapur and he was required to go to Pune and Mumbai for getting sanction for the construction of new court building in Kasaba Bawada, Kolhapur. He has also mentioned that on 19.04.2016, his client was present and sought an adjournment. The reasons given in the affidavit cannot be doubted unless they are countered.

6. In view of the above, I set aside the order dated 16.03.2009 passed by the learned District Judge, Jaysingpur. Appeal from Order is allowed, subject to payment of costs of Rs. 3,000/- to be paid to the respondents. Regular Civil Appeal No. 71 of 2004 is restored to its original file, as the appeal is pending since long time on the file of the

District Judge, Jaysingpur. The learned District Judge, Jaysingpur, is directed to hear and decide the appeal on or before 15.01.2018. Parties and their respective counsel to appear before the Appellate Court on 04.10.2017 at 11.00 a.m. Parties to co-operate with the trial Court. The matter will be heard on the scheduled dates.

7. Appeal from Order is disposed of accordingly.

(MRIDULA BHATKAR,J.)