

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

**CIVIL APPLICATION NO.119 OF 2017
IN
FAMILY COURT APPEAL NO.166 OF 2015**

Mrs. Supriya Raste : Applicant.

In the matter between

Mrs. Supriya Raste : Appellant.

versus

Shailendra Dilip Raste : Respondent.

**Mr. Sudhir S Hardikar for the Applicant/Appellant
Mr. Shailendra Dilip Raste – Respondent in person.
Mr. Uday Warunjikar – appointed as Amicus Curiae**

**CORAM : R. M. SAVANT &
SMT. SADHANA S JADHAV, JJ.**

DATE : 13th JUNE 2017

P.C.

1 The above Civil Application has been filed for restoration of the above Family Court Appeal along with Civil Application No.283 of 2015 which has been dismissed for non-prosecution on 05/05/2017 on account of the non-appearance of the learned counsel for the Appellant on the said day. The order passed on the said day i.e. on 05/05/2017 records that despite the specific directions being given to the Appellant to remain present in Court, the said order is not complied with and even her advocate is also not present in Court. The said order further records that the Appellant is not keen in pursuing the Appeal. Thereafter certain observations have been made as regards access to be given to the Respondent – husband, of the child in respect of which

directions are issued in the impugned order.

2 The absence of the learned advocate for the Appellant is sought to be justified on the basis of the averments which have been made in the above Civil Application and especially in paragraphs 4, 5 and 6 thereof. It appears that the above Appeal was on board on 12/04/2017 and was adjourned to 18/04/2017. However, on 18/04/2017, the date assigned to the matter, as can be seen from the extract of the daily board on internet produced by the learned counsel for the Appellant/Applicant, was 05/06/2017. However, it seems that the Respondent – husband mentioned the matter for urgent reliefs in respect of which no notice was given to the learned counsel appearing for the Appellant. The matter was accordingly placed on board on 03/05/2017 when no appearance was put up on behalf of the Appellant nor the Appellant was present. It is the case of the Respondent husband that a notice that the matter would come up on board on 03/05/2017 was given to the Appellant. The reasons for the absence of the learned counsel for the Appellant on 03/05/2017 are stated in paragraph 6 of the above Civil Application wherein it has been averred that the mother of the learned counsel for the Appellant was hospitalized on account of which the learned counsel for the Appellant was in hospital, wherein he received a message from the High Court that the above Appeal along with Civil Application No.283 of 2015 is appearing at Item No.907 and that Item No.905 was being heard. Since the learned counsel for

the Appellant was not aware of the matter being circulated, it is his case that he was surprised on receiving such a message. On account of the fact that he could not appear on 03/05/2017, that the above Appeal along with the Civil Application was adjourned to 05/05/2017. It is the case of the Appellant/Applicant that the learned counsel for the Appellant was on his way to the High Court when the matter reached. It is the case of the Appellant/Applicant that a message was sent by the learned counsel for the Appellant/Applicant to learned Advocate Shri Uday Warunjikar who has been appointed as amicus curiae that he would be reaching High Court. In view of the fact that the learned counsel for the Appellant/Applicant did not reach in time, the Appeal/Application came to be rejected for non-prosecution. The dismissal of the Appeal/Application was informed by learned counsel Shri Uday Warunjikar – the appointed amicus curiae to the learned counsel for the Appellant/Applicant. The matter, according to the learned counsel for the Appellant/Applicant, was in fact mentioned at 1-15 pm on the same day i.e. 05/05/2017, and notice of the same was also given to the Respondent – husband. The learned counsel for the Applicant had received a SMS on his cell phone from the Respondent at about 1.22 p.m. which read as follows :-

“I had already applied for certified copy. Tension is unbearable as a diabetic person. Going to home.
Er. Shailendra Raste”

In these circumstances, in the absence of the respondent husband, the matter could not be restored on a oral application made by the learned counsel for the

Appellant/Applicant.

3 The aforesaid facts indicate that it is on account of inability of the learned counsel appearing for the Appellant/Applicant to remain present in Court on 03/05/2017 and thereafter though he was to remain present on 05/05/2017, he could not reach in time that the Appeal/Application was dismissed. Though the application for restoration was made on the same day, it could not be considered because the Respondent did not remain present. Since the Appeal/Application has been dismissed for non-prosecution and since the Appeal arises out of the judgment and order passed by the Family Court, it would be just and proper to grant one final indulgence to the Appellant/Applicant – wife to prosecute the Appeal/Application on merits. The above Civil Application would therefore have to be allowed. However, in the facts and circumstances of the present case, the Appellant/Applicant to pay costs of Rs.2000/- to the Respondent husband within two weeks from date. The above Civil Application is accordingly allowed and made absolute in terms of prayer clause (a). Resultantly, the above Family Court Appeal along with Civil Application No.283 of 2015 would stand restored to file. The Family Court Appeal along with Civil Application No.283 of 2015 to be placed for admission on 11/07/2017. The above Civil Application is accordingly disposed of.

[SMT. SADHANA S JADHAV, J]

[R.M.SAVANT, J]