

Mr. Ramdas Shelke, for Applicants.  
Mr. Sandesh Patil with Ms. Anusha Amin i/by M/s. Triyama Legal, for Respondent  
Nos.1, 2, 2b, 2c, 3 to 5.

**DATE:** 10<sup>th</sup> JULY, 2017

1. The above Appeal was filed by the Advocate for the Appellants on 28-09-2016. On that day, he had filed the Appeal without obtaining Vakalatnama from the Appellants. Chapter IV of the Bombay High Court Appellate Side Rules, 1960 pertains to the the presentation of the Appeals and Applications. Rule 6 in Chapter IV provides what an Advocate is required to do if he wants to act or appear in a matter before securing a Vakalatnama in his favour. The same is reproduced hereunder :

*When an Advocate instructed by a party to act or appear in a matter has not been able to secure a Vakalatnama in the prescribed form duly signed by the client, he may file a statement signed by him slating that he has instructions from or on behalf of his client to act or appear in the matter*

*and also undertaking to file within a week a Vakalatnama in the prescribed form, duly signed by the party.*

2. Admittedly, the above Appeal is filed by the Advocate for the Appellants without filing a statement as contemplated under Rule 6 quoted above. Despite the above serious lapse on the part of the Advocate for the Appellants, on 8th June, 2017 this Court passed the following order :

*"1. The above Second Appeal is filed on 28th September, 2016. Admittedly, the Advocate for the Appellants has till date not filed Vakalatnama signed by all the Appellants. If the Advocate for the Appellants fails to file Vakalatnama signed by all the Appellants on or before 13th June, 2017, the above Second Appeal shall stand dismissed. Stand over to 13th June, 2017 high on board."*

3. On 13th June, 2017 the learned Advocate for the Appellants informed the Court that Appellant Nos.6a1, 6a2 and 6a3 have not signed the Vakalatnama in his favour. In view thereof, on 13th June, 2017 after setting out the order dated 8th June, 2017 , this Court in paragraph No.2 of its order recorded and directed as follows :

*"2. The learned Advocate for the Appellants has till date failed to file Vakalatnama signed by the Appellant Nos.6a1, 6a2 and 6a3. The Advocate for the Appellants ought not to have filed the Second Appeal before this Court on behalf of Appellant Nos. 6a1, 6a2 and 6a3 in the absence of them not having authorized the Advocate to do so by signing a*

*Vakalatnama in his favour. In view thereof, the Appellant Nos.6a1, 6a2 and 6a3 are directed to be deleted from the array of the parties shown in the cause title. Office shall forthwith delete the names of the Appellants Nos.6a1, 6a2 and 6a3. All the Respondents shall be served by private notice i.e. by Speed Post A.D. and/or by hand delivery. Place the above Second Appeal for Admission on 30<sup>th</sup> June, 2017.*

*3. The learned Advocate for Respondent Nos.4 and 5 appears and waives service of notice."*

4. The learned Advocate for the Appellants/Applicants has now taken out the above Civil Application seeking recall/modification of the order dated 13th June, 2017 and allowing him to file Vakalatnama on behalf of Appellant Nos.6a1, 6a2 and 6a3. He has pointed out from paragraph No.8 of the Civil Application that since Appellant Nos.6a1, 6a2 and 6a3 were out of station and had gone for religious tour at Chinchani, Tal. Chikkodi, Dist. Belgaum, Karnataka, they were unable to sign the Vakalatnama in his favour. He has submitted that the Applicants have a very good case on merits and if the order dated 13<sup>th</sup> June, 2017 is not recalled, grave prejudice would be caused to them. He therefore submits that the order dated 13th June, 2017 be recalled/modified and the Advocate for the Appellants be allowed to file Vakalatnama on behalf of Appellant Nos.6a1, 6a2 and 6a3 on record.

5. The learned Advocate for the Respondents correctly submits that if the Civil Application is allowed and the Vakalatnama is now taken on record the Appellants will have to seek condonation of delay of 365 days in filing the above Second Appeal.

6. For the reasons set out on behalf of the Appellants in paragraph No.8 in the Civil Application, I am of the view that grave injury and prejudice will be caused to Appellant Nos.6a1, 6a2 and 6a3 if the Application seeking recall of the order is not allowed. In view thereof, the above Civil Application is allowed and the order dated 13-06-2017 is set aside. In order not to waste any further time on the matter and in view of the Appellant Nos. 6a1, 6a2 and 6a3 having agreed to pay costs of Rs.10,000/- to the Respondent Nos. 1 to 5 within a period of two weeks from the date of this order, the delay in filing the Second Appeal is condoned and the above Civil Application is disposed of.

6. The above Second Appeal shall be taken up for Admission on 25th July, 2017 subject to the Advocate for the Appellants removing all the other office objections raised by the Court Office and also upon payment of Rs.10,000/- to the Respondent Nos.1 to 5. It is clarified that if the objections are not removed and/or cost not paid on or before 25th July, 2017, the above Second Appeal shall be dismissed on that day.

7. Stand over to 25<sup>th</sup> July,2017, high on board.

**(S.J.KATHAWALLA,J.)**