

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO.1655 OF 2016****IN****SECOND APPEAL NO.13 OF 1994**

Shri Nivrutti Pandurang Nale

...Applicant/Appellant

vs.

Shri Uttam Ganu Nale And Others

...Respondents

....

Mr. S.R. Morey, i/b. V.S. Talkute, for the Applicant.

Mr. L.S. Gaikwad, for Respondent Nos. 1 and 3.

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CORAM : S.C. GUPTE, J.**DATED : 20 JANUARY 2017****P.C. :**

. Heard learned Counsel for the parties. This Civil Application seeks recall of a dismissal order passed in a pending Second Appeal. The Appeal has been pending since 1994. The appeal was dismissed for default of appearance on the part of the Appellant. The Applicant submits that the Applicant's Advocate could not appear when the matter was called out, since the final hearing board had collapsed on the particular date and the matter was mentioned in the morning session. On an oral request for recall of the dismissal order, again a written notice was given to the Respondents' Advocate for mentioning at 3.00 p.m. for restoration of the appeal. It is submitted that notice was refused, though the matter was mentioned at 3.00 p.m. on the very date. The Court was of the view that the Applicant should take out an appropriate Civil

Application and, accordingly, this Civil Application is taken out. Learned Counsel for the Respondents submits that this appeal has been dismissed and recalled on the request of the Appellant after three defaults. The Advocate of the Respondents ultimately applied for execution of the decree of the Lower Court. Anyway, I am of the view that interest of justice will be adequately served, if the order of dismissal is recalled and set aside, subject to payment of reasonable costs to the Respondents. The Civil Application is, accordingly, allowed in terms of prayer clause (a), subject to payment of cost of Rs.25,000/- by the Appellant to the Respondents. Costs to be condition precedent.

(S.C. GUPTE, J.)