

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

**CIVIL APPLICATION NO.4624 OF 2016
IN
FIRST APPEAL NO.1474 OF 2013**

Shri.Subhash Patil ..Applicant/Appellant

V/s.

Chanakya Feeds Pvt. Ltd. ..Respondent

Mr.Rajas Naik i/by Mr.Umesh Mankapure for the Applicant/Appellant.

Mr.Amit Karade for Respondent No.1.

CORAM : M. S. SONAK, J.

DATE : 06 MARCH 2017.

P.C.

1. Upon production, taken on board.
2. This application seeks recall of order dated 27-03-2014, which was a conditional order to the effect that the appeal shall stand dismissed for non-prosecution in case the paper book is not filed within the prescribed period.
3. The applicant has furnished an explanation for the delay caused in taking out the application for restoration. The learned counsel for the respondent submits that there are misstatements made in the application and therefore, the

application should be dismissed. He relies upon the decision of this Court in *The State of Maharashtra V/s. Pandit Ganpat Tare & Ors. (2004-1-Bombay Case Reporter (Criminal) 419)* to submit that there were wrong statements made in the application, and therefore such application is required to be dismissed.

4. In this case, it cannot be said that any substantial wrong statement has been made. In the application, it is stated that there was a confusion with regard to the knowledge about the order and further, there was also some issue with regard to the change in the pecuniary jurisdiction. The delay is sufficiently explained, although there is no doubt that the applicant ought to have been more diligent. In such matter of lack of diligence, the consequent prejudice to the respondents can always be compensated in terms of costs. Accordingly, the Civil Application is allowed and the delay is condoned. The order dated 27-03-2014 is recalled. All this shall be subject to the applicant paying costs of Rs.10,000/- to the respondent within a period of two weeks from today. Such cost should be either paid directly to the respondent or deposited in this Court within a period of two weeks from today. If such costs is deposited in this Court, the respondent shall be at liberty to withdraw such amount unconditionally. If there is any default in

the payments/deposit of cost, the application shall be dismissed without any further reference to this Court. If the amount of costs are paid within the period of two weeks, the registry to transmit the papers in this appeal to the concerned District Court since, the valuation of this appeal is less than Rupees One Crore. The applicant to file paper book within two months from today before the concerned District Court, Sangli.

(M. S. SONAK, J.)