

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 3574 OF 2017  
IN  
SECOND APPEAL NO. 1628 OF 2005  
WITH  
CIVIL APPLICATION NO. 3575 OF 2017

Mohammad Anees Mohammad Ibrahim  
(Died) LR Sugraabee Mohammad Anees ...Applicant

Versus

Khaleda Begum Habib Khan Thro.  
GPA-Habib Khan Gulab Khan ...Respondent

Mrs. A.N. Ansari, Advocate for Applicant

**CORAM : A.M. DHAVAL, J.  
DATE: 14<sup>th</sup> DECEMBER, 2018**

**ORAL ORDER :**

1. The appeal was admitted by order dated 25.10.2005. Thereafter, the sole respondent was served with notice of appearance. When the matter became ripe, final hearing notice was issued to respondent which could not be served as she was found not residing at the same address.

2. Once the applicant has furnished correct address, and the respondent is duly served at the same address, the appellant cannot suffer on account of change of address of

the respondent. The respondent is supposed to file registered address and notice can be served at such address. If she has not appeared, the court notice for final hearing should be served at the last known address where she was earlier served. This legal position was forgotten by the Registrar (Judicial) while passing the order dated 16.11.2016 of dismissal for failure of the appellant to prosecute the appeal. The dismissal is contrary to the provisions of law. Therefore, the delay of 37 days in filing application for recall as well as the application are allowed.

The appeal is restored to file.

3. The notice of final hearing be served on the respondent at the last known address, if necessary by pasting.

4. Stand over to 01.02.2019.

**( A.M. DHAVALA )**  
**JUDGE**

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