

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

Civil Application No. 08670 of 2019
(In Civil Application No. 04229 of 2019)
(In Second Appeal Stamp No. 09253/2016)

District : Latur

Manohar s/o. Kerba Biradar,
Age : 67 years,
Occupation : Agriculture,
R/o. Konali (Nagral),
Taluka Deoni, Dist. Latur.

.. Applicant
(Original
defendant
no.01)

versus

1. Govindrao s/o. Kerba Biradar,
Age : 73 years,
Occupation : Agriculture,
R/o. Konali (Nagral),
Taluka Deoni, Dist. Latur.

.. Respondent
(No.01 -
Original
plaintiff
&

2. Gopal s/o. Kerba Biradar,
Age : 70 years,
Occupation : Agriculture,
R/o. Konali (Nagral),
Taluka Deoni,
Dist. Latur.

No.02 -
Original
defendant
no.02)

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*Dr.(Mr.) S.D. Tawshikar, Advocate, for the
applicant.*

*Mr. Satish S. Deshmukh, Advocate, for
respondent no.01.*

Respondent no.02 served (Absent).

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 19TH SEPTEMBER 2019

ORAL ORDER :

01. Present application has been filed for recall of order passed by this Court on 12th July 2019. It appears that the present applicant had filed the second appeal which was dismissed in default and then an application was filed i.e. C.A. No. 4229 of 2019 for getting delay of 940 days condoned in filing application for restoration of the second appeal. In that application, from time to time, it appears that order regarding issuance of notice has been passed. As regards respondent no.02 is concerned, by initial order, the notice was made returnable on 18th April 2019 and it appears that on the request of learned Advocate for the applicant, even *Humdast* was allowed. However, learned Advocate for the applicant did not supply copy for issuing notice to respondent no.02 and in that circumstance, order dated 11-04-2019 directing the applicant to supply the copy was passed which was made returnable on 01-08-2019 and the direction was to supply the copy on or before 25-04-2019. Conditional order was passed, but then it appears that the matter was on board on 24-04-2019 i.e. a day before the date that was given for supply of copy and then the applicant was directed to supply the copies on or before 06-06-2019. It was also conditional order, that in case of failure on the part of the applicant to supply the copies within the period i.e. on or before 06-06-

2019, the application shall stand dismissed automatically without further reference to the Court. Thereafter, it appears that the learned Advocate who was then appearing for the applicant, got the said time extended only on a circulation note on 13-06-2019; obviously which had no attachments of any earlier orders passed by this Court. That time was extended by two days and then copy itself was supplied. The Registry issued notice of respondent no.02 but then it was awaited. Under such circumstance, the matter was on board on 28th June 2019. On that day, learned Advocate for the applicant was absent. All the other details were pointed out by the learned Advocate for respondent no.01 and therefore, an order was passed giving an opportunity to the learned Advocate for the applicant to explain the circumstances and the matter was then adjourned to 12-07-2019. Even on 12-07-2019, learned Advocate for the applicant was absent and then by a detailed order, Civil Application No. 4229 of 2019 was dismissed.

02. Heard learned Advocate Mr. S.D. Tawshikar for the applicant. Heard learned Advocate Mr. S.S. Deshmukh for respondent no.01. None for respondent no.02 though served.

03. It has been tried to be stated in the application, that since the matter was listed in

await category on 12-07-2019, concerned Advocate had not appeared as he was under the impression that the matter would be automatically adjourned. Some excuse is tried to be given on the absence of the Advocate for 28-06-2019. Definitely, it appears that there is a lame excuse. Merely because the matter is appearing in await category, the Advocate cannot ignore the matter; rather he should be attentive and at least one day after such impression on 28-06-2019, he ought to have checked the proceedings as to whether the matter is really adjourned for awaiting the service of notice of respondent no.02. But it appears the learned Advocate for the applicant, then appearing, continued the impression on 12-07-2019 also. The record speaks otherwise. It was due to the fault of the learned Advocate for the applicant who was then appearing, such orders were required to be passed.

04. Now, the applicant is ready to go ahead with matter and take necessary steps and therefore, an opportunity deserves to be given to the applicant. However, at the same time, the inconvenience that is caused to the respondent no.01 deserves to be compensated in terms of money.

05. Hence, the following order :-

(a) The application is allowed.

(b) The order passed by this Court on 12-07-2019 in Civil Application No. 04229 of 2019 is hereby recalled, subject to deposit of costs of Rs. 3,000/- [Rupees three thousand only], in this Court, within a period of two weeks. It is clarified that the deposit of costs is a condition precedent and if the amount of costs is not deposited, it shall be treated that this order of recalling is not passed at all. After the deposit of costs, it be given to respondent no.01.

(c) Place Civil Application No. 4229 of 2019 for further consideration on 18th November 2019.

(Smt. Vibha Kankanwadi)
JUDGE

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