

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

APPEAL FROM ORDER NO.70 OF 2016

Jagannath Balchand Pande @ Parashar ... APPELLANT

VERSUS

Narayan Kondaji Adhane & anr. ... RESPONDENTS

.....
Shri K.C. Sant, Advocate for appellant
Ms Ashwini Ingle, Advocate holding for
Shri G.K. Kshirsagar, Advocate for respondent No.1
.....

CORAM: R.G. AVACHAT, J.

DATED : 28th AUGUST, 2019.

ORDER :

The challenge in this appeal is to the order dated 11/8/2016, passed by District Judge-5, Aurangabad, in an appeal, being Regular Civil Appeal No.272/2011, rejecting the application (Exh. 15) for restoration of appeal, which was dismissed in default.

2. Heard Mr. Sant, learned counsel for the appellant and Ms Ashwini Ingle, learned counsel appearing for respondent No.1. The appellant was the plaintiff in the suit. On 10/8/2016, the Regular Civil Appeal was kept for hearing. When it was called out, neither the counsel for the appellant nor himself was present.

Learned District Judge was, therefore, pleased to dismiss the appeal in default.

3. The record indicates that, the learned counsel for the appellant, appeared before the learned District Judge on the same day and moved the application for restoration of the appeal. The learned District Judge turned down the prayer on the ground that the appeal had been pending for hearing since long, no case for restoration was made out.

4. Learned counsel for the respondent supports the impugned order.

5. It needs no mention that the matter has to be decided on its own merits. The application for restoration of the appeal indicates that the learned counsel for the appellant had marked his presence before the Court. The Court was, however, busy in criminal matter. On the day the appeal was dismissed in default, the learned counsel appeared by 5.00 p.m. and urged for recall of the order. When on the day the matter is dismissed in default, the party appears and requests for recall of the order, it is recognized practice that the order is recalled. The learned District Judge, in the factual backdrop, ought to have allowed the application for restoration of the appeal.

6. In view of the above, the Appeal from Order deserves to be allowed in terms of the following order :

ORDER

The Appeal from Order is allowed. The order impugned in this appeal is set aside. Regular Civil Appeal No.272/2011 is restored to the file of the District Judge-5, Aurangabad.

The appellant to pay costs of Rs.1000/- (Rupees one thousand) to respondent No.1.

(R.G. AVACHAT)
JUDGE

fmp/-