

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

938 CIVIL APPLICATION NO.12922 OF 2019
IN
FA/2607/2018

DILIP ANANTRAO PATIL
VERSUS
THE STATE OF MAHARASHTRA AND ORS

...
Mr.S.B.Madde, Advocate for applicant.
Mr. S.N.Morampalle, A.G.P. for R – 1.
Mr.G.K.Chinchole h/f Mr. S.M.Vibhute,
Advocate for R – 2 & 3.

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CORAM : V.L. ACHLIYA, J.
DATE : 20/12/2019
...

ORAL ORDER:

1. The applicant has moved this application seeking recall of order of dismissal of Appeal.
2. Heard learned counsel for applicant and respondent Nos. 2 and 3.
3. In brief, it is the contention of learned counsel for applicant that due to unavoidable reason, the applicant could not remain present on 21/09/2019. By recording absence of Advocate, this Court has

dismissed Appeal in default. It is submitted that applicant could not remain present on the date of listing of Appeal due to illness. He has instructed Mr. Sachin Kute, Advocate to mention the matter. However, the Appeal was dismissed before the instructing Advocate to appear and to mention the matter.

4. On the other hand, learned counsel for respondent Nos. 2 and 3 opposed application with contention that dismissal of Appeal in default was not only on the basis of absence of Advocate on the date of dismissal of Appeal. It is submitted that prior to 21/09/2019 for 3 consecutive dates, the Advocate for applicant was absent.

5. On due consideration of submissions advanced, I am of the view the reasons assigned are not satisfactory to recall the order and restore the Appeal. However, in the interest of justice I am inclined to allow the application subject to cost of Rs. 10,000/- [Rupees Ten Thousand] within four weeks from the date of order. In case cost is deposited, the Appeal stands restored and same be placed for hearing on 22/01/2020. Failure to deposit cost, the order of restoration be recalled and application stands dismissed. If cost is deposited, the same be

transferred to the account of Govt. Cancer hospital, Aurangabad to be utilized for the children suffering from cancer and taking treatment in the pediatric ward in said hospital.

6. Civil Application disposed of in above terms.

[V.L.ACHLIYA]
JUDGE

KNP