

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

**CIVIL APPLICATION NO. 4053 OF 2017  
WITH  
CIVIL APPLICATION NO. 1923 OF 2014  
WITH  
CIVIL APPLICATION NO. 1924 OF 2014  
IN  
FIRST APPEAL NO. 18 OF 2002**

Bajanna Rajanna Sunchal (since decd.

Through legal heirs) :

Kamalraj Chandrakant Roteallu & ors. ....Appellants

V/s.

Shantabai Irrana Sunchal & ors. ....Respondents

Mr. Sagar Kursija i/b. Mr. T.D. Deshmukh for the appellants.

Mr. Ajit M. Savagave for respondent nos.3 to 8.

**CORAM : SMT. ANUJA PRABHUDESSAI, J.**

**DATED : 25<sup>th</sup> JUNE, 2019.**

**P.C.:-**

1. Civil Application No.4053/2017 :- By this application, the applicant has sought to recall the order dated 02/03/2006 in First Appeal No.18/2002 which was dismissed for not taking steps to serve the unserved respondents.

2. Heard the learned counsel for the applicant and the respondent respectively. I have perused the records.

3. The appeal was admitted vide order dated 14/03/2003. By order dated 02/03/2006, the appellant was directed to pay Bhatta charges within a period of one week from the date of the order. The applicant was put to notice that failure to comply with the said directions would result in the dismissal of the appeal for non prosecution. The applicant did not deposited the Bhatta charges within the stipulated time and as a consequence thereof, the appeal was dismissed for non prosecution.

4. The applicant has stated that due to inadvertence, the advocate on record did not notice that the matter was listed on board on 02/03/2006. He did not appear before the Court on 02/03/2006. He was not aware of the conditional order and as a result, no steps were taken. In my considered view, the appellant should not be penalized for the negligence of his advocate.

5. Considering the reasons stated in paragraph 3 of the application, in my considered view, constitute sufficient ground. Dismissal order dated 02/03/2006 is recalled. First Appeal No.18/2002 is restored to file. Mr. Ajit Savagave, the learned waives service on behalf of respondent nos.3 to 8.

6. Civil Application No.4053/2017 stands disposed of.
7. In terms of Circular No. Rule/P-3601/2015 dated 01<sup>st</sup> September, 2015, the Registry to transfer this proceedings along with all Civil Applications to the District Court, Solapur.

**(SMT. ANUJA PRABHUDESSAI, J.)**