

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.407 OF 2019
IN
WRIT PETITION NO. 12621 OF 2018

Balasaheb Mhasku Thorat and Ors.	.. Applicants
Versus	
Baidabai Balasaheb Tengale	.. Respondent

Mr. Rameshwar N. Gaambhire applicants.
Mr. K.D. Bhosale for respondent.

CORAM : K.K. TATED, J.

DATE : 28 FEBRUARY 2019.

P.C:-

. Heard learned Counsel for parties.

2. By this civil application applicant/original petitioner is seeking to recall the order dated 27.11.2018 passed by this Court by which writ petition No.12621 of 2018 stands dismissed for non prosecution.

3. The learned Counsel for the applicant submits that inadvertently it remain on their part to remain present when the matter called out. He submits that in the interest of justice this Hon'ble Court be pleased to recall the order dated 27.11.2018 and matter be heard on its own merits. He submits that they have good chance of success in the present matter. He submits that if order is not recalled, irreparable loss will cause th the applicant.

4. On the other hand, the learned Counsel for the applicant vehemently opposed the present Civil Application. He submits that applicants has not shown sufficient cause for

recalling the order dated 27.11.2018. Hence, civil application is required to be dismissed with cost.

5. I heard both the sides at length. It is to be noted that because of mistake on the part of advocate, litigants should not suffer. In the present proceedings, it remain on the part of the advocate to appear when the matter called out on 27.11.2018. To that effect, applicant has made averments in the civil application.

6. Considering the submissions made by the learned Counsel for the applicant, averments made in civil application and because of mistake on the part of advocate, litigants should not suffer, I am satisfied that the applicant has made out case for allowing this civil application. Hence, following order :

- a) Order dated 27.11.2018 passed by this Court is recalled.
- b) Writ petition No.12621 of 2018 is restored on file for hearing on its own merits.
- c) Learned Counsel Mr. K.D. Bhosale waives service for respondent in writ petition No.12621 of 2018
- d) Civil application stands disposed of.
- e) No order as to costs.

(K.K. TATED, J.)