

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.1 OF 2020
IN
FIRST APPEAL NO. 1052 OF 1999

Najmuddin Tajammul Shaikh .. Applicant/Appellant
Versus
Naimuddin Tajammul Shaikh & Anr .. Respondents

...

Mr.Sujith Suresh with Amey Sawant for the applicant/appellant.
Mr.A.S.H. Khan for respondent no.1.

CORAM: BHARATI DANGRE, J.
DATED : 11th MARCH 2020

P.C:-

1 Interim Application seeks restoration of the First Appeal which came to be dismissed in default on 17th January 2020 on account of non prosecution.

2 The application taken out proceeds to state that the Advocate representing the appellant is a senior citizen and he did not appear before the Court on the said date being unaware that the Appeal is listed for final hearing on 10th January 2020.

3 Resultantly, he was unaware that the matter is listed on 17th January 2020 and kept for dismissal.

4 The result was obvious. On the said date, the Appeal came to be dismissed.

5 Learned counsel for the applicant is justified in stating that it was because of the default of the counsel the appellant should not suffer and that is what the law says. The appellant will surely not made to suffer on account of the default of the counsel and therefore, the First Appeal deserve to be heard on merits on setting aside the order of dismissal. However, learned counsel appearing for the respondent who graciously state that he has no objection for restoration, must also be compensated by adequate costs because on both the dates, respondent was representing by a counsel.

6 In such circumstances, Interim Application No.1 of 2020 is allowed subject to payment of Rs.10,000/- to the respondent within a period of two weeks from today.

7 On such costs being paid, the First Appeal instituted in the year 1999 be placed for final hearing on 21st April 2020 at 3.00 p.m.

SMT. BHARATI DANGRE, J