

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

**CIVIL APPLICATION NO.2334 OF 2017
IN
FIRST APPEAL NO.175 OF 2003**

Nilesh Vijaysingh Rajemahadik .. Applicant

In the matter between
The Oriental Insurance Co.
Vs.

Vimalabai Govind Tilak (since deceased)
through her legal heirs
1(a) Ms.Nandini Vasantrao Gadgil & Ors. .. Respondents

Mr.Nikhil Wadekar i/by Mr.Nandu Pawar for the applicant.
Ms.Meenal J. Chandnani for the respondents/orig.appellants.

CORAM : R.D.DHANUKA, J.
DATE : 14th January 2020

P.C.:

. By this civil application, the applicant seeks recall of the oral judgment dated 25th May 2017 passed by this court thereby allowing the first appeal filed by the original appellants partly ex parte.

2. I have perused the averments made by the applicant in the civil application and more particularly in paragraphs 3 to 6 thereof and the personal affidavit filed by the learned advocate on record recording the reasons as to why the applicant could not remain present on 25th May 2017. Learned advocate on record suddenly fell ill on 25th May 2017 due to diarrhoea.

3. It is the case of the applicant that learned advocate enquired about the matter on 26th May 2017 and immediately filed civil application at the reopening of Court for recall of the said order after obtaining copy of the oral judgment dated 25th May 2017.

4. Ms.Chandnani, learned counsel for the original appellants opposes this civil application on the ground that no case is made out under Order XLI Rule 21 of the Code of Civil Procedure, 1908 for recall of the oral judgment dated 25th May 2017.

5. A perusal of the civil application and the personal affidavit filed by the learned advocate on record clearly indicates that the learned advocate did not appear on 25th May 2017 due to health reason. I am inclined to accept the reasons recorded in the civil application and in the personal affidavit filed by the learned advocate.

6. Matter was heard in vacation by the learned Judge when the respondent through their learned advocate could not remain present due to health reason. I am thus inclined to recall the oral judgment dated 25th May 2017.

7. The oral judgment dated 25th May 2017 is recalled. First appeal is restored to file. Civil application is disposed off on aforesaid terms. No order as to costs.

8. Place the first appeal on board for 'hearing and final disposal' on 7th February 2020.

R.D.DHANUKA, J.