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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO.4 OF 2020
IN
LETTERS PATENT APPEAL NO.114 OF 2003
IN
WRIT PETITION NO.4205 OF 2002 (D)

Bhanumati wd/o Prakash Shende and ors.

-vs-

Shankar s/o Shripal Brahmne (Dead) Thr. Legal Representatives and anr.

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Shri Anil S. Mardikar, Senior Advocate with Shri S. G. Joshi, Advocate
for appellants/applicants.

Shri G. B. Sawal, Advocate for respondent No.1.

CORAM : A. S. CHANDURKAR AND PUSHPA V. GANEDIWALA, JJ.

DATE : September 08, 2021

By this application the appellants pray that the order dated 02/01/2020 be recalled and the Letters Patent Appeal be restored for adjudication on merits.

On 07/11/2019 at the request of the appellants hearing was adjourned to 14/11/2019 and it was directed that in case the learned Senior Advocate for the appellants was not available alternate arrangement shall be made for conducting the matter failing which costs of Rs.50,000/- would have to be paid by the appellants. Thereafter on 02/01/2020 in view of similar request made on behalf of the appellants the Letters Patent Appeal was dismissed in default with costs of Rs.50,000/-.

According to the learned Senior Advocate appearing for the appellants the reason for his non-availability was that he was required to undergo medical treatment at New Delhi and

hence he was not in Nagpur. To substantiate the aforesaid, documents issued by the concerned hospital are placed on record. It is submitted that an opportunity be granted to the appellants to be heard on merits.

The application is opposed by the learned counsel for the respondent No.1 on the ground that sufficient opportunity was granted to the appellants but despite that adjournments were sought. He therefore submits that the application is liable to be rejected.

The record indicates that the appeal was on the board from 14/11/2019 as directed. The appeal however could not be heard by the Court due to paucity of time. It was then listed on 02/01/2020 on which date the Courts reopened. We find that the documents on record indicate that the learned Senior Counsel was at New Delhi undergoing some medical treatment. Though it is true that on 07/11/2019 as a last chance the proceedings were kept on 14/11/2019 it is equally true that from 14/11/2019 till the winter vacations the appeal could not be heard. We find an opportunity to the appellants deserves to be granted so that the proceedings could be decided on merits. At the same time the respondent No.1 cannot be made suffer. In that view of the matter we pass the following order :

The order dated 02/01/2020 is partly recalled to the extent the appeal stands dismissed for want of prosecution. The Letters Patent Appeal is restored however the appellants shall pay costs of Rs.25,000/- to the legal heirs of respondent No.1 as a condition precedent. The same should be paid within period of one week from today.

Subject to aforesaid the application is allowed and

disposed of.

Letters Patent Appeal No.114 of 2003

Put up for hearing on 17/09/2021.

JUDGE

JUDGE