

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

Civil Application [CAO] No.255 of 2021
in
Civil Application [MCA] St.No.5594 of 2020
in
Second Appeal No.322 of 2004 (D)

Dinesh Waman Appa Gadve

vs.

Nagar Parishad, Morshi, through its Chief Officer, District Amravati

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

Court's or Judge's Orders

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Shri C.B. Dharmadhikari, Advocate for the Applicant/Appellant.

CORAM : S.M. MODAK, J.
DATE : 23rd SEPTEMBER, 2021.

Heard the learned Advocate for the appellant-defendant. Though notice is served on the respondent-plaintiff and there is an appearance, today no one is present. This Court dismissed the appeal filed by the present appellant on 06/12/2018. It was due to non-appearance of the appellant and not prosecuting the appeal. When the appeal was dismissed, learned Advocate Shri A.J. Gilda was present and he has expressed difficulty to argue the matter, because he was not having instructions. The order further refers that he has made a statement that he has already sent a notice to the appellant in November, 2017.

In view of that, this Court has discharged learned Advocate Shri J.T. Gilda. This Court has formed an opinion that the appellant is not interested in prosecuting the appeal. If there is an application for restoration, this Court has directed the appellant to deposit the costs of Rs.5,000/-. The appellant has

already deposited costs of Rs.5,000/-. The copy of the receipt is filed.

In the present application, the appellant had given reasons of medical illness, for which he could not contact the Advocate. This ground is not disputed. Further more, there is a contention that the substantial question of law framed in the appeal is also substantial question of law in the appeal mentioned in paragraph 3 of the application. The suit for possession is filed by Morshi Nagar Parishad. It was decreed. Whereas, the first appeal filed by the present appellant came to be dismissed.

In view of the above position, as now the appellant is ready with the appeal. This Court feels it necessary to restore the appeal. Hence, the order :

ORDER

- i. Order dated 06/12/2018 passed by this Court is recalled.
- ii. Second Appeal No.322 of 2004 is restored.
- iii. The civil applications are allowed and disposed of accordingly.

Second Appeal No.322/2004 :

The appeal is already admitted. The learned Advocate for the appellant to serve the learned Advocate for the respondent about restoration of the appeal. The matter be kept after four weeks.

Civil Application No.1127/2005 :

Already there is an order to stay the execution of the judgment during pendency of the second appeal. By that order, the appellant was directed to deposit the rent to the respondent during pendency of the second appeal.

In view of restoration of the appeal, the judgment passed by the Court below is stayed till next date. The appellant to continue in paying the rent to the respondent till that time.

JUDGE**sandesh*