

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.3783 OF 2022

**GANESHGIRI VENKATGIRI GIRI
VERSUS
VIDYADHAR PUNDALIK GODAJI AND OTHERS**

...
Advocate for Petitioner : Mr. R. D. Thorat
Advocate for Respondent No.3 : Mr. Mr. D. R. Jethliya
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 21st SEPTEMBER, 2022

PER COURT :

1. Petitioner is aggrieved by order dated 12/10/2021, passed by learned Ad-hoc District Judge-2, Kandhar, Link Court Mukhed, in Civil Misc. Application No.07/2020, thereby dismissing the application filed by petitioner for restoration.
2. Petitioner is original plaintiff in Regular Civil Suit No.30/2012, which was filed for seeking permanent injunction and possession of encroached portion. The suit was partly allowed thereby directing defendant Nos. 1 and 2 to give possession of the portion encroached to plaintiff.
3. Petitioner filed Regular Civil Appeal No.72/2014 challenging the judgment and decree of trial Court to the extent of reliefs denied to him. By order dated 08/01/2020, said appeal is dismissed in default, on account of failure of the parties to remain

present. Petitioner, therefore, filed Civil Misc. Application No. 07/2020 seeking restoration of appeal by setting aside order of dismissal in default. The application is dismissed by appellate Court holding that no sufficient cause is shown for petitioner's and his advocate's failure to appear when appeal was called out for hearing.

4. I have heard learned advocate for petitioner and learned advocate for respondent No.3. None for respondent Nos. 1 and 2, though served.

5. It is a matter of record that petitioner and his advocate failed to appear when appeal was called out for hearing, on some of the occasions. However, since substantial rights of petitioner are involved in the matter, in the interest of justice, one more opportunity needs to be given to petitioner to contest appeal on merits.

6. In that view of the matter, writ petition is allowed. Impugned order is quashed and set aside, subject to petitioner paying cost of Rs.5,000/- to respondent No.3 in appellate Court. Appeal is restored to its original position. Petitioner and respondents shall cooperate in expeditious disposal of appeal.

(NITIN B. SURYAWANSHI, J.)