

IN THE HIGH COURT OF JUDICATURE AT BOMBAY BENCH
AT AURANGABAD

919 CIVIL APPLICATION NO. 4639 OF 2022
IN SA/57/2001

NARAYAN S/O BALBHIM MUNDEKAR AND ANOTHER
VERSUS
ANKUSH S/O VITTHAL PATULE AND OTHERS

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Advocate for Applicants : Mr. A. L. Kanade
Advocate for Respondent Nos. 1 and 2 : Mr. V. M. Humbe
Advocate for Respondent No.3-a : Mr. S. S. Dande

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CORAM : BHARAT P. DESHPANDE, J.

DATED : 27 JULY 2022

PER COURT :-

1. This application is filed for restoration of Second Appeal No. 57 of 2001 which was dismissed vide order dated 08.02.2022 for want of prosecution.

2. Learned counsel for the applicants submitted that on that day, the earlier Advocate, though present in the Court, failed to argue the matter in spite of giving opportunity. Learned counsel submits that for that reason the applicants should not be punished. He claimed that there was no fault on the part of the applicants and the matter was dismissed only

on the ground that the counsel for the applicants failed to argue the matter in spite of giving opportunity.

3. Learned counsel for the respondents opposed the present application on the ground that the earlier order passed by this Court speaks for itself.

4. On perusal of the order dated 08.02.2022, it is clear that the earlier counsel for the applicants, in spite of opportunities, failed to argue the matter.

5. The applicants are now praying for restoration of the Second Appeal on the ground that their earlier Advocate was at fault for which they should not be punished. Learned counsel for the applicants submitted that he is ready to argue the matter on merit if restored.

6. Considering the above aspects, in order to give an opportunity to the applicants, the order of dismissal could be set aside subject to costs. Considering the fact that the applicants are labours, it would be just if the application is allowed by imposing nominal costs of Rs.2,000/- to be

deposited with the High Court Legal Services Sub-Committee, Aurangabad Bench, Aurangabad. Hence the following order:

ORDER

- I. The application for restoration stands allowed subject to condition that the applicants shall deposit costs of Rs.2,000/- with the High Court Legal Services Sub-Committee, Aurangabad Bench, Aurangabad within a period of one month from today.
- II. If the costs is paid within time, the appeal shall be restored.
- III. The application stands disposed off accordingly.

BHARAT P. DESHPANDE, J.