



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

MISC. CIVIL APPLICATION NO. 435/2018
IN
SECOND APPEAL NO. 202/1999

Smt. Indubai Wd/o Rajaram Naokar and others
Vs.
Bhaurao S/o Shrikrishna Kanherkar and others

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

Court's or Judge's orders

Shri A.D. Bhate, Advocate for applicants

CORAM : SMT. M.S. JAWALKAR, J.
DATE : 12/09/2023

Heard learned Counsel for applicant.

2. In spite of service, none for the respondent.
3. Present application is filed by appellant for recalling order dated 01/02/2018, dismissing Second Appeal No. 202/1999, under Order XLI, Rule 17(1) of the

Civil Procedure Code. It is submitted that this Court after hearing the party by order dated 27/09/2016, pleased to remit the case to the Trial Court at Khamgaon for framing an additional issue with respect to the date of birth of original plaintiff Nos. 1 and 2.

4. It was directed after recording of the findings by the Trial Court upon certification by the Lower Appellate Court be remitted back to this Court. In view of this order, the record and proceeding was sent back to the Trial Court for adducing evidence on additional issues. After certification, the appeal was listed for final hearing. Since, the Counsel for appellant failed to appear on 31/01/2018, it was listed on 01/02/2018, for dismissal. Due to inadvertent mistake and by oversight the Counsel for appellants could not keep the track of the present appeal and it was dismissed in default vide order dated 01/02/2018. Application was filed immediately within limitation.

5. In spite of service, none for the respondent. In view thereof, I am satisfied that there is genuine reason for not appearing in the matter, when matter was called out.

Accordingly, order dated 01/02/2018, is hereby recalled.

6. Registry is directed to restore the appeal on its original number.

7. After restoration of the appeal, issue notice to the respondents, returnable within three weeks.

8. Application stands disposed of.

(SMT. M.S. JAWALKAR, J.)