

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

Misc. Civil Application No.291 of 2022

In

Second Appeal No.38 of 2019 (D)

OMPRAKASH S/O CHELARAM GURBANI

VS

JAGDISH PRASAD S/O HIRALAL GUPTA

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

Court's or Judge's Order

Shri Sachin Katarpawar, Advocate for the Applicant/Appellant
Shri B.N. Mohta, Advocate for Respondent-sole/Non-Applicant

CORAM : ANIL S. KILOR, J.

DATED : 13.01.2023

1. The second appeal was dismissed vide order dated 24.11.2021, as the learned counsel for the appellant/applicant was consecutively absent on three dates.

2. The present application is for restoration of second appeal. It is submitted that because the earlier Advocate, for the reasons disclosed in the paragraph 8 of the application, was not in position to appear in the second appeal and therefore, the applicant was to change his lawyer. However, as there was a pandemic during the said period, he could not engage a lawyer of his choice and therefore, the second appeal was dismissed for want of prosecution. Accordingly, he prays for restoration of the second appeal.

3. Shri Mohta, learned counsel for the respondent, is strongly opposing the application and submits that no satisfactory reasons are disclosed to show that the default was not intentional.
4. I have perused the application and the reasons stated in the same.
5. Considering to the subject matter involved in the second appeal, I am of the opinion that one opportunity should be given to the appellant to pursue this appeal. Accordingly, for the reasons stated in the application, the application is allowed.
6. The second appeal is restored to its original file.
7. The application is **disposed** of accordingly.

[ANIL S. KILOR, J.]