

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

**CIVIL APPLICATION (CAO) NO.1043/2022**  
**IN**  
**MISC. CIVIL APPLICATION ST. NO.20265/2022**  
**IN**  
**APPEAL AGAINST ORDER NO.49/2015 (D)**

Smt Sunita Purushottam Moon

Vs.

Shri Anirudhha P. Moon and another

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

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Shri S.D. Malke, Advocate for appellant

**CORAM : SMT. M.S. JAWALKAR, J.**  
**DATED : 09/02/2023**

The present application is filed for condonation of delay in filing application for restoration of appeal dismissed in default. The present applicant has filed the appeal against order bearing No.49/2015 challenging the order passed by learned District Judge on 05/05/2012. The appeal has been admitted on 18/01/2016 and further it was posted on 17/01/2018 for final hearing vide order dated 21/12/2017. The earlier Counsel Shri Sanjay Ganesh Bhandare informed the Court on 30/11/2018 that he has no instruction to appear in the matter.

2. It is contention of the appellant/applicant that he never informed by earlier Counsel that he is withdrawing his power. On 12/06/2019, as nobody appeared, the matter was kept for dismissal on 03/07/2019.

3. On 03/07/2019, it was observed by this Court that *“today, even in second half, none appeared for the appellant. It appears that appellant is not interested to prosecute the matter. Hence, appeal is dismissed in default for want of prosecution.”* According to the appellant, as previous Counsel did not inform as regarding withdrawal of his power from the matter so also filing of pursis of no instructions. Hence, appellant/applicant could not engage another Counsel. The appellant has engaged another Counsel and received record to file application for restoration by learned Counsel Shri S.D. Malke. The appeal was restored thereafter. After restoration of the same, it was listed on 30/01/2020.

4. It is submitted by learned Counsel for appellant that his name was not appearing though earlier Counsel was discharged. The name of present Counsel was not appearing in the cause list. Except on 15/11/2021, the name of Counsel for appellant was not reflecting in the cause list. Therefore, the matter remained to be marked and noted and thus order dismissing the appeal came to be passed.

5. It is submitted that there is a good case on merit in filing of appeal however due to mistake on the part of office, he did not appear in the matter in the Court.

6. The learned Counsel for respondents vehemently opposed the application that matter is

second time dismissed in default. However, considering the explanation in the application for condonation of delay, I proceed to pass the following order:

**ORDER**

- i) The application is allowed.
- ii) The delay in filing application for restoration of the appeal is hereby condoned.
- iii) The Registry is directed to register Misc. Civil Application on its original number.
- iv) The Office is further directed to take appropriate entries of the Counsel so that for this reason, there should not be injustice to any parties.

The application stands disposed of.

**MISC. CIVIL APPLICATION ST. NO.20265/2022**

The present application is filed for restoration of the appeal dismissed in default. The application is opposed by learned Counsel for the respondents. However, for the reason stated in the application, the application is allowed.

2. The Registry is directed to register the Appeal Against Order which was dismissed in default on its original number.

3. After appeal is registered, issue notice to the respondents, returnable within two weeks.
4. Learned Counsel Shri S.A. Chaudhari waives notice for respondent No.1.

**JUDGE**

*R.S. Sahare*