



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

**CIVIL APPLICATION NO. 13043 OF 2023
IN SA/311/1993**

**SHANKARRAO MAHARUDRAPPA KAPPIKARI L.RS. ANILKUMAR
SHANKARRAO KAPPIKARI
VERSUS**

THE STATE OF MAH.THRO.COLLECTOR AND OTHERS.

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Mr. S. S. Halkude, Advocate for applicant

Mr. B. D. Bhange, AGP for Respondent – State

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CORAM : Y. G. KHOBRAGADE, J.

DATE : 12 MARCH 2024

PER COURT :-

1. Heard the learned Counsel appearing for the applicant and the learned AGP for the non applicants.

2. By the present application, the applicant has put forth prayer clause (B), as under:-

“(B) The order dated 21.04.2023 passed by this Hon’ble High Court as Appeal stands dismissed being the appellant reported to be dead be kindly set aside by condoning the delay 65 days and the appeal be kindly be restored.”

3. It appears that the appellant-original plaintiff instituted the present Second Appeal, challenging the judgment and decree dated 02.02.1993 passed by the learned first appellate Court arising out of the judgment and decree dated 18.07.1985, passed by the learned Civil Judge, Senior Division, Latur in R.C.S. No.304 of 1980, whereby the suit of the appellant/plaintiff for mandatory injunction in respect of land Survey No.61/A of village Somnathpur, taluka Udgir, has been dismissed. Further, after issuance of notice, it has been reported that the appellant has died, but no steps were taken. Therefore, vide order dated 21.04.2023, the appeal came to be dismissed. The applicant claimed that he is the sole legal heir of deceased appellant and right to sue survives. Therefore, he has filed the present application for recalling the order dated 21.04.2023.

4. The non-applicant State authority has no objection. Therefore, considering the nature of claim, the present application is allowed. The order dated 21.04.2023 is hereby recalled and the appeal is restored at the stage at which it was dismissed.

[Y. G. KHOBRADE, J.]

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