



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 9993 OF 2023
IN
SECOND APPEAL NO. 422 OF 1993

Bhagwan S/o Sakharam Khatal,
Age : 55 years, Occ. Agril.,
R/o Plot No. 42/2 near Santoshi
Mata Mandir, Banjara Colony,
Aurangabad.

... Applicant

Versus

Sahebrao S/o Dhondiba Mahanor,
Age 65 years, Occ. Agri.,
R/o Nakshatrawadi,
Tq. and Dist. Aurangabad.

... Respondent

.....
Mr. Kachru A. Ingle, Advocate for the Applicant.
Mr. A. D. Kasliwal, Advocate for the Respondent.
.....

CORAM : ABHAY S. WAGHWASE, J.

Reserved on : 18.07.2024

Pronounced on : 22.07.2024

ORDER :

1. This is an application for recalling the order dated 12.07.2023 by which, the second appeal is dismissed for want of prosecution. Record shows that on 10.11.2022, at the request of Advocate for the applicant/appellant in second appeal, the matter was posted to 01.12.2022 and the advocate for the applicant assured that the matter will be worked out on that date and no adjournment on any count will be sought. Thereafter, the matter was listed on 19.06.2023 and 28.06.2023 and since the counsel for applicant/appellant was absent

on both dates, the matter was kept on 12.07.2023 in dismissal category. However, on 12.07.2023 also, none appeared on behalf of the applicant/appellant and hence the order of dismissal for non-prosecution came to be passed on that date.

2. Learned counsel for the applicant submits that inadvertently and due to oversight, he could not mark listing of the matter on 19.06.2023 and 12.07.2023 and the absence was not deliberate. That, he is ready to argue the matter. That, dismissal of appeal for non-prosecution would seriously prejudice the interest of the applicant, who is a poor person, and he will suffer irreparable loss. Learned counsel therefore prays to allow the application and restore the second appeal by recalling the order dated 12.07.2023.

3. The other side has strongly objected on the ground that repeatedly matter was adjourned and was specially fixed on request of appellant. There was no due diligence in conducting the matter. The suit and decree is old. According to him, there is no ground to restore the second appeal.

4. Perused the record. It seems that the matter pertains to recovery of possession of a plot situated at Nakshatrawadi,

Aurangabad, for which the applicant had preferred Regular Civil Suit No. 1051 of 1987. The said suit was partly decreed to the extent of recovery of arrears of rent. Then the matter travelled before the first appellate court i.e. Additional District Judge, Aurangabad vide R.C.A. No. 26 of 1989 preferred by the respondent/original defendant. The said appeal came to be allowed by judgment and order dated 01.01.1993 and the decree passed in the suite was quashed and set aside, against which, the second appeal was preferred by the applicant/original plaintiff in 1993.

5. Taking the above material into consideration and the statement across the bar that, due to oversight matter and dates could not be noted and marked and that there was no deliberate avoidance or absence, as a fair opportunity, the matter needs to be restored. Hence, I proceed to pass the following order.

ORDER

- I. The application is allowed in terms of prayer clause (B).
- II. The application is accordingly disposed of.

[ABHAY S. WAGHWASE, J.]