

**INTERIM APPLICATION NO. 7184 OF 2024
IN
FIRST APPEAL NO. 624 OF 2000**

Gajendra Ramrao Worlikar	...	Appellant/Applicant
V/s.		
Smt. Vijaya Rangnath Worlikar and	...	Respondents
Ors.		

Mr. Saurabh Uttangale with Vedant Joshi, for the applicant.
Mr. R.A. Shaikh with Mr. Hasan Sayed and S. Sayed, for respondent
nos. 2 to 6.

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CORAM : KISHORE C. SANT, J.

DATE : 5TH APRIL 2024.

PC:

1. This application is for restoration of the appeal, which came to be dismissed in default by order dated 3rd August, 2023. It is the case of the applicant that the office of the advocate for the applicant was under renovation as result the entire record in the office was shifted somewhere and even the applicant could not contact their advocate to know the status of the case. It is only in the month of March 2024, when the applicant made enquiry about the case status, it

was revealed that the appeal was dismissed for default on 3rd August 2023.

2. Learned advocate for the respondent no. 2 vehemently opposes the application stating that even on earlier occasion i.e. on 16th January 2019, the appeal was dismissed for default. That the respondent time and again failed to take up the matter for final hearing. He had also filed a Civil application (St) no. 17334 of 2018 in First Appeal No. 624 of 2000 for fixing early date of hearing. This Court by order dated 16th January 2019, was pleased to add the matter to the final hearing board, considering that the appeal is of 2000.

3. Learned Advocate further submits that on one hand the respondent no. 2 is trying to get the appeal listed for final hearing. However, the appellant is not showing any interest. The appeal was dismissed by order dated 8th November 2019 for default as the appellant did not appear for final hearing. Order dated 8th November 2019 was recalled by order dated 17th February 2020 by condoning the delay. The matter was listed and was directed to be placed on final hearing board on 4th March 2020. Even thereafter, the applicant is not pursuing the appeal and therefore, it again came to be dismissed for default. He submits that in the present case preliminary decree was not

challenged. Now it is final decree which is to be challenged and the same is pending since 2000. He submits that even appeal is not maintainable. His client is deprived of the fruits of decree in view of the present appeal. He submits that in filing this application there is a delay of 199 days caused. He thus prays for rejection of the application. In the alternative, he submits that the appeal itself be fixed for final hearing and on the same date the application be heard for restoration.

4. This Court finds that unless the appeal is restored it cannot be placed for final hearing.

5. Considering the submission, dates and earlier orders, this Court finds that for some or the other reason the appeal is not heard on merits, there is certainly lack of due diligence on the part of the applicant.

6. If the appeal is to be restored, heavy costs need to be imposed upon the applicant. The application is, therefore, allowed, subject to costs of Rs.50,000/- to be deposited within three weeks from today in the office of this Court.

7. Respondent No. 2 shall be entitled to withdraw the said amount without requiring to file formal application.

8. Placed the appeal for hearing on 2nd May 2024.

(KISHORE C. SANT, J)