

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.14202 OF 2023
IN
FIRST APPEAL STAMP NO.12390 OF 2021**

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Kriti Manor Properties & Hotels Pvt. Ltd. ..Applicant/Appellant
Versus
Hi-tek Engineers, Mumbai ..Respondent

Mr. Aditi Rungta a/w Pranesh, for the Applicant/Appellant.
Mr. Yashodhan V. Divekar a/w Rohan Karande i/by M/s. Divekar & Co.,
for the Respondent.

CORAM : KISHORE C. SANT, J.

DATE : 8th JANUARY, 2024

PC.

1. Heard the parties.

2. This application is filed seeking restoration of the First Appeal that came to be dismissed in view of order passed by the Registrar (Judicial-II) dated 23rd August, 2022. Three weeks' time was granted to remove office objections. Advocate's clerk removed objections in the matter, however, the Vakalatnama could not be filed of the new advocate on removing objections. The parties were under bonafide impression that the Vakalatnama has been filed. Since the matter was not listed thereafter on board, the fact of non-filing of Vakalatnama could not be noticed by the parties and advocate. Later on, the Respondent filed Interim Application in the suit pending before this Court. At that time, while looking the record, it was noticed that the order was passed on 23rd August, 2022. No appearance of the advocate was shown on record.

Thus, it is thereafter inquiry was made and it was found that inadvertently Vakalatnama was not filed and for that reason the matter came to be dismissed. Learned advocate submits that in fact the first set of objections was already removed, only the fact of filing of Vakalatnama was not noticed. No fault can be found of the party. For the inadvertent mistake, no party should be suffered.

3. Learned advocate for the Respondent vehemently opposes the application stating that it was the duty of the concerned advocate to see that the Vakalatnama is filed. Though the order was passed on 23rd August, 2023, this application is filed only on 24th June, 2023 and deserves to be dismissed.

4. On going through the averments in the application, this Court finds that non-filing of Vakalatnama cannot be said to be deliberate act. From paragraph No.4, it is seen that the Vakalatnama was handed over to the clerk of the advocate for filing in the Registry. This Court finds that for such inadvertent mistake, no party should be suffered. A case is made out to allow the Application.

5. The Application is therefore allowed.

6. First Appeal stands restored to its original position.

7. Interim Application stands disposed of.

[KISHORE C. SANT, J.]