



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

APPEAL FROM ORDER NO. 06 OF 2025

Baban Haribhau Karpe .. Appellant

Versus

Haribhau Vithal Karpe
Since (Died) Through LRs.
Subhadrabai Haribhau Kape (abated)
and others .. Respondents

Shri Pravin N. Kalani, Advocate for the Appellant.
Shri M. B. Kolpe, Advocate h/f Shri V. B. Deshmukh, Advocate
for the Respondent No. 10.
Shri Sagar S. Phatale, Advocate for the Respondent Nos. 7, 12
and 13.

**CORAM : SHAILESH P. BRAHME, J.
DATE : 16TH OCTOBER, 2025.**

FINAL ORDER :

. Heard both sides.

2. Appeal from order is directed against the order dated 08.07.2024 passed in Civil M. A. No. 220 of 2018 rejecting the application by Adhoc District Judge - 2, Parbhani for restoration/re-admission of the regular appeal.

3. Appellant is original plaintiff, who had filed R.C.S. NO. 07 of 2009. The respondent Nos. 1 to 6 are his relatives interese and remaining respondents are purchasers. His suit was

dismissed on merits by the Trial Court vide judgment and decree dated 17.04.2012. Being aggrieved, R.C.A. No. 100 of 2012 was preferred by him. It was dismissed in default vide order dated 31.01.2018 by the Appellate Court observing that he consistently remained absent. For restoration/re-admission Civil M. A. No. 220 of 2018 U/O XLI Rule 19 of the C. P. C. was preferred. It was rejected by the impugned order.

4. Learned counsels appearing for the respondents support impugned order on the ground that appellant was consistently absent since 2016 in the appeal and the Appellate Court was constrained to dismiss the appeal in default. They would submit that there is no error of jurisdiction or illegality in the impugned order.

5. Learned counsel for the appellant undertakes that if his appeal is restored or re-admitted, his client is ready to cooperate with the Appellate Court for early disposal of the appeal. Relying on the statement made by the learned counsel for the appellant, I deem it fit to extend one opportunity to the appellant to go before the Appellate Court and prosecute his appeal on merits.

6. R.C.A. No. 100 of 2012 was not decided on merits. Due to communication gap the appellant and his lawyer were unable to attend the proceedings. The respondents did not file any say to Civil M. A. No. 220 of 2018, which went uncontested. Under

these circumstances, I find substance in the appeal and it deserves to be allowed on certain conditions. I, therefore, pass following order.

O R D E R

- A. Appeal from order is partly allowed.
- B. Impugned order is quashed and set aside and R.C.A. No. 100 of 2012 shall stand restored/readmitted to its original position on condition that appellant pays to respondent Nos. 2 to 6 Rs. 15,000/- (Rs. Fifteen thousands only) as a cost.
- C. Payment of cost is condition precedent and cost is to be deposited before the lower Appellate Court on or before 10.11.2025.
- D. Parties shall appear before the lower Appellate Court on 10.11.2025.
- E. Parties shall co-operate the lower Appellate Court for expeditious disposal of appeal.
- F. On deposit of cost the same shall be disbursed to the respondent Nos. 2 to 6 equally.

[SHAILESH P. BRAHME J.]