



IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

11 APEAL FROM ORDER NO. 35 OF 2024

ABDUL FAHIM ABDUL ALEEM SIDDIQUI
VERSUS
MANSOORALI RAJJAB ALI

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Advocate for the Appellant : Mr. Bhadekar D.R.
Advocate for Respondent (Caveator) : Mr. Vishant P. Kadam

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CORAM : S. G. CHAPALGAONKAR, J.
Dated : 11.02.2025

PER COURT :-

1. Heard Mr. Bhadekar, learned Advocate appearing for appellant and Mr. Kadam, learned Advocate appearing for respondent.
2. Present appeal takes exception to the order dated 19.10.2022 passed by learned District Judge-2, Ambejogai in Misc. Civil Application No. 3 of 2016, by which, a prayer of appellant seeking restoration of Regular Civil Appeal No. 93 of 2008 has been rejected.
3. Appellant had filed Regular Civil Appeal No. 93 of 2008 assailing judgment and decree passed by Civil Judge Senior Division, Ambejogai in Special Civil Suit No. 01 of 2005. Appeal was admitted and it was posted for paper book since 16.04.2010. Appellant was communicated to deposit paper book charges on or before 14.10.2014, however, compliance was not made. Ultimately learned District Judge posted matter for dismissal and finally dismissed the same for want of prosecution vide order dated 29.12.2015.
4. Appellant filed Misc. Civil Application No. 3 of 2016 for restoration of appeal giving reason that he was busy in attending ailing relative. In evidence, he states that his brother had suffered heart attack.

However, medical evidence to that effect was not placed on record. The learned District Judge observed that for more than one year appellant defaulted in paying paper book charges, therefore dismissal of appeal was imperative, as such declined to re-admit appeal.

5. Mr. Bhadekar, learned Advocate appearing for appellant submits that substantial rights of the parties are involved in the litigation. Appellant instituted suit for specific performance of contract and for injunction. The decision of lis on merit is necessary. Non payment of paper book charges is only reason for dismissal of appeal. Sufficient reasons are incorporated in the application seeking restoration explaining absence of appellant on the date when matter is actually dismissed for want of prosecution.

6. Per-contra, Mr. Kadam, learned Advocate appearing for respondent invited attention of this Court to Roznama to contend that, since 2009 appeal was posted for paper book charges. Appellant was directed to deposit paper book charges by order of Court, still, for about one year he defaulted to do so. The learned District Judge is, therefore, right in refusing re-admission of appeal.

7. Having considered submissions advanced, apparently substantive appeal assailing decree of the trial Court has been dismissed by the appellate Court only because appellant defaulted in depositing charges of paper book. On 14.10.2014 a communication was made to the appellant to deposit charges and lastly order of dismissal of appeal has been passed on 29.12.2015. Apparently there is 14 months period during which appellant defaulted to deposit paper book charges.

8. Appellant employed reason as to health condition of his brother on a particular day when he was given last chance to deposit paper book charges. In absence of medical evidence, appellate Court declined to accept reason. However, fact remains that appellant has

tendered evidence affidavit in support of his contention which is not controverted by the respondent.

9. Evidence of respondent falls short to out rightly reject the case of the appellant. When substantive rights of the parties are involved in the litigation, it is always desirable that the decision be rendered on merit and genuine cause is not frustrated. Therefore, liberal approach needs to be adopted in matter of restoration when appeal is dismissed on technical ground. The inconvenience caused to the respondent can be compensated by saddling costs on appellant.

10. In result, appeal succeeds. Hence following order :

ORDER

- (i) Appeal against Order is partly allowed.
- (ii) The impugned order dated 09.10.2022 passed by learned District Judge-2, Ambejogai in Misc. Civil Application No. 3 of 2016 is quashed and set aside.
- (iii) Misc. Civil Application No. 3 of 2016 is allowed.
- (iv) R.C.A. No. 93 of 2008 be re-admitted on condition that appellant shall deposit paper book charges within a period of four weeks from today. So also deposit cost of Rs. 7,000/- (Rs. Seven Thousand Only), to be paid to the respondent.
- (v) The deposit of cost and paper book charges within 4 weeks shall be condition precedent for readmission of appeal.
- (vi) Parties to appear before learned District Judge-2, Ambejogai on 04.03.2025.
- (vii) On appearance of parties, learned District Judge-2, Ambejogai shall endeavour to finally decide appeal within six months from the date of appearance of parties.

(S. G. CHAPALGAONKAR)
JUDGE