

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1842 OF 2025.

IN

FIRST APPEAL NO. 422 OF 2019.

Dayanand Mahadev Mapuskar

...Applicant/Appellant.

Versus

Narasinh Krishna Balgi

...Respondent.

Mr. Yash Dewal i/b Mr. S. S. Kanetkar for Applicant.

Mr. Pradeep J. Thorat, Ms. Aditi Naikare for Respondent No. 1.

Coram : Sharmila U. Deshmukh, J.

Date : 20th February, 2025.

P. C. :

1. Interim Application has been preferred seeking recall of the order dated 26th August, 2024 dismissing the Appeal for non-prosecution.
2. Learned counsel appearing for Applicant submits that it was due to default on the part of Advocate that the matter could not be attended and for default on the part of Advocate, litigant should not be made to suffer. He submits that in the meantime, there was also change of Advocate and the Interim Application has been filed seeking restoration. The request is opposed by Mr. Thorat, learned counsel appearing for Respondent contending that there is non-compliance of

order dated 23rd March, 2021 directing interim payment pending final disposal. He submits that though the Appeal has been expedited by the Apex Court, the Appellant has not been diligent in pursuing the Appeal.

3. Perusal of the record indicates that on 8th August, 2024 and on 26th August, 2024, none had appeared for Appellant and therefore, Appeal came to be dismissed for non-prosecution. It is default on the part of Advocate for which, the litigant cannot be made to suffer.

4. In light of the above, the Application is allowed and order of dismissal is recalled. First Appeal is restored to file.

5. As regards non-compliance of order dated 23rd March, 2021, in view of the said order, the stay stands vacated and it is open for Respondent to execute the decree.

6. As the Appeal has been expedited by the Supreme Court, list the Appeal on **28th February, 2025** under the caption 'High on Board'.

[Sharmila U. Deshmukh, J.]