

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 1628 OF 2025.

IN

FIRST APPEAL NO. 1724 OF 2011.

Cletus Igantius Gomes

...Applicant.

Versus

Mr. Neville Ignatius Gomes And Ors.

...Respondents.

Mr. Drupad Sopan Patil for the Applicant.

Mr. Denzil D'mello for the Respondent No. 1.

Mr. Surya Das, for the Respondent No. 4.

Coram : Sharmila U. Deshmukh, J.

Date : February 11, 2025.

P. C. :

1. Interim Application has been preferred seeking recall of the order dated 27th January, 2025 dismissing the Appeal for non prosecution.

2. Learned Counsel appearing for the Applicant submits that due to inadvertent error on part of the Advocate on record when the matter was listed on 24th January, 2025 the Advocate could not remain present and thereafter the matter was mentioned at 2.30 p.m. and came to be listed on 27th January, 2025. He submits that the Advocate was under the misapprehension that the matter will be called out at 4.00 p.m. as the same was listed under the caption at 4.00 p.m. and hence could not remain present when the matter was called out.

3. Learned Counsel appearing for the Respondents submits that the averments in the Application would infact demonstrate negligence on part of the Applicants which should not be condoned by this Court.

4. The Appeal has been dismissed for non prosecution for non appearance by the Advocate for the Appellants when the matter was called out for hearing. For default on part of the Appellant the litigant cannot be may to suffer especially when the matter can be heard on merits being of the year 2011 and therefore no prejudice will be caused to the Respondents. However, considering that the matter was dismissed and was restored earlier, it would be appropriate, if the order is recalled subject to payment of cost of Rs. 2500/- to be paid to the Kirtikar Law Library before the next date.

5. List the above First Appeal on **6th March, 2025** (at 4.00 p.m.).

[Sharmila U. Deshmukh, J.]