



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

94 APPEAL FROM ORDER NO. 30 OF 2025

HABIB KHAN S/O JABBAR KHAN PATHAN

VERSUS

STATE OF MAHARASHTRA THROUGH COLLECTOR HINGOLI AND OTHERS

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Mr. Shaikh Nasimoddin Rafiyoddin, Advocate for the Petitioner

Mr. S. N. Morampalle, AGP for Respondent/s-State

Mr. H. I. Pathan, Advocate for Respondent No.3

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CORAM : SHAILESH P. BRAHME, J.

DATE : 28.01.2026

PER COURT :-

. Heard both sides.

2. Appeal from order is directed against order dated 07.04.2025 rejecting the application to restore the appeal, which was dismissed for default on 27.01.2023.

3. Plaintiff had filed RCS No.96 of 2016 for injunction. The Trial court dismissed the suit on 04.12.2017. Being aggrieved, RCS No.45 of 2017 was preferred. The appellant failed to pay the paper book charges and therefore, on several occasions the matter was required to be adjourned. Ultimately, on 27.01.2023, the appeal came to be dismissed for non-

prosecution.

4. Quashment of the order dated 27.01.2023 is sought on the ground that the appellant is aged and ill at the relevant time. It is further submitted that he is interested in prosecuting the matter. The learned counsel candidly submits that his client is ready to cooperate with the lower Appellate Court and ready to pay the paper book charges.

5. Per contra, learned counsel Mr. Pathan for respondent no.3 would submit that lapses are attributable to the appellant. He is not diligent in prosecuting the appeal. It is further submitted that the ground of ailment is concocted and the medical certificates are castigated to be afterthought.

6. I have considered rival submissions of the parties. The learned counsel for the appellant has undertaken to pay the paper book charges. The substantive rights of the parties are at stake. I propose to adopt the pragmatic approach in quashing the impugned order and directing the parties to appear before the lower Appellate Court subject to certain directions.

7. Appeal from order is allowed. Impugned order is quashed and set aside on condition that the appellant shall pay cost of Rs.5,000/- to

respondent no.3 within two(2) weeks from the date of appearance before the lower Appellate Court.

8. Appellate court shall decide the appeal on its own merits and as expeditiously as possible not more than eight (8) months from today.

9. Parties shall appear before the lower Appellate court on 10.02.2026.

10. The appellate shall pay paper book charges within one (1) week from the date of appearance before the lower Appellate Court.

(SHAILESH P. BRAHME, J.)

PRW