

ORDER BELOW APPLICATION (EXHIBIT 34)
IN REGULAR CIVIL APPEAL NO. 62/2006
(SACHIN & OTHS. VS. SURESH & OTHS.)
(PASSED ON : 21/10/2022)

Nature of the Application.

1. This is an application filed by appellants to set aside dismissal order passed against the respondents Nos. 1(e), 1(f), 2 and 3 (for short 'respondents') dated 10/06/2022 (Exhibit 1).

Contents in the Application.

2. The appellants have contended that appeal is dismissed against the respondents as they failed to take steps against them due to illness of their advocate and inadvertently. The valuable civil rights of the appellants are involved in this appeal. Therefore, in the interest of justice it is necessary to grant this application.

3. On these grounds the appellants have prayed to grant the application.

Contents in the Say of the Respondent No. 2.

4. The respondent No. 2 has filed say.

5. The respondent No. 2 has not objected the application.

**No Say of the Respondent Nos. 1(a) to 1(d) and
of Other Respondents.**

6. The respondent Nos. 1(a) to 1(d) and the other respondents have failed to file say.

7. Hence, as per order dated 22/08/2022 this application proceeded without say of the respondent Nos. 1(a) to 1(d) and the other respondents.

The Argument.

8. I have heard Shri. C. D. Zambare, advocate for the appellants and Shri. M. T. Nagane, advocate for the respondent No. 2,

at length.

9. They argued in consonance with their contentions in the application and established principles of law. I will deal with those at the time of discussing the points taken for consideration.

10. None appeared and argued for and on behalf of the 1(a) to 1(d) and the other respondents. Hence, the application proceeded without arguments of the 1(a) to 1(d) and the other respondents.

Points and Findings.

11. Upon hearing the following points arise for my consideration and I record my findings thereon as under for the reasons stated below :-

	<u>Points</u>	<u>Findings</u>
1.	Can the dismissal order passed against the respondents be set aside, as prayed for ?	Yes.
2.	What order ?	Application Granted, As per final order.

Reasons as to Point Nos. 1 & 2.

12. The appellants though were aware that they have to take steps to serve the respondents remained absent and failed to take proper steps.

13. In my view, considering the nature of the appeal it is necessary in the interest of justice to allow the appellants to proceed against the respondents by setting aside dismissal order.

14. Further, if the appellants are allowed to proceed against the respondents by setting aside dismissal order the matter can be decided on merits and it will help to avoid multiplicity of proceeding. Therefore,

also dismissal order passed against the respondents is required to be set aside.

15. According to the appellants, the respondents are necessary party. In my view, considering the nature of the appeal an opportunity is required to be given to the appellants to proceed against the respondents by setting aside dismissal order, which will help to arrive at proper conclusion.

16. Above all, if the application is allowed no harm or injustice will be caused to the respondents but it will help to decide the appeal on merit. Therefore, I am inclined to give an opportunity to the appellants to proceed against the respondents by setting aside dismissal order in the interest of justice.

17. After giving thoughtful consideration to the facts of the case and the averments made by the appellants in this application and arguments advanced by Shri. Zambare, advocate for the appellants, I am of the considered view that for just decision of this appeal it is necessary to give an opportunity to the appellants to proceed against the respondents by setting aside dismissal order in order to find out the truth in the allegations made by the appellants against all respondents.

18. In short, considering the facts and circumstances of the case, I am inclined to grant this application and allow the appellants to proceed against the respondents by setting aside dismissal order.

19. However, in spite of being aware that he was required to remain present or at least to intimate their advocate to do necessary to take steps against the respondents, the appellants have not taken care inspite of more than sufficient opportunities were given to them. No satisfactory explanation is coming on record by the appellants why the appellants failed to remain present and take steps. The appeal is of the

year 2006. Due to negligence on the part of the appellants, the respondents have unnecessarily suffered and matter has lingered. The appellants cannot escape from their liability by merely filing such application at this stage.

20. This non-action in that regard is unexplained and without any legal and valid reason. Therefore, this is a fit case in which the respondents need to be compensated by awarding suitable costs. The State i.e. the Taluka Legal Services Authority, Pandharpur are also entitled to share the cost amount as directed from time to time by the Hon'ble Supreme Court and the High Court. However, as the respondents have not contested the application, they are not entitled to share the cost amount. The cost is quantified at Rs. 500/- (Rs. Five Hundred only) considering the nature of appeal, delay caused and the overall conduct of the appellants and the stage of this appeal.

21. Accordingly, I answer Point No. 1 in the affirmative and Point No. 2 as application granted, as per final order.

22. In the result, order.

ORDER.

1.	The application (Exhibit 34) is granted, by setting aside the order of 'dismissal' passed against the respondent Nos. 1(e), 1(f), 2 and 3, subject to costs of Rs. 500/- (Rs. Five Hundred only) in addition to previous cost, if any unpaid, to be deposited in the Court on or before 14/11/2022 failing which the application shall stand rejected, automatically.
b)	The cost awarded shall be apportioned as herein below :-

i)	The Taluka Legal Services Authority, Pandharpur.	Rs. 500/- (Rs. Five Hundred only).
----	---	--

(Pronounced in the Open Court).

Dated : 21/10/2022.

(M. B. Lambe),
District Judge-1 Pandharpur.

C E R T I F I C A T E

I affirm that the contents of this PDF file Order is same word to word as per the original Order.

- (a) Name of the Stenographer : Sou. M. M. Kulkarni
- (b) Court : M. B. Lambe, District Judge – 1 & Addl. Sessions Judge, Pandharpur.
- (c) Order signed by P.O. on : 21/10/2022
- (d) Order uploaded on : 31/10/2022.