



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION**

**APPEAL FROM ORDER NO. 921 OF 2019**

Sangamner Taluka Sahakari Doodh  
Utpadak And Prakriya Sangh Limited ...Appellant

Versus

Baswant Ranoji Patil A  
Proprietor Of Santosh Trans- Trade ...Respondent

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Mr. Pavan S. Patil a/w. Mr. Shubham Saraf and Mr. Tanmay Deshmukh, for  
the Appellant.

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**CORAM : ARIF S. DOCTOR, J.**  
**DATE : 2<sup>nd</sup> APRIL, 2026**

**P.C.**

1. The present Appeal impugns an Order dated 4<sup>th</sup> May 2016 passed by the City Civil Court at Bombay, whereby Notice of Motion No. 3050 of 2013 filed in S.C. Suit No. 3199 of 2012 came to be dismissed. The Appellant is the Plaintiff in the said Suit, which was originally filed in this Court as Suit No. 1028 of 2012.
2. Mr. Patil, learned counsel appearing on behalf of the Appellant at the outset, points out that the Respondent though served, has not appeared.
3. He then submitted that the Suit came to be dismissed vide an Order dated 19<sup>th</sup> July 2013 since the Advocate for the Appellant, was unwell



and had not appeared on that date, nor was the Appellant, i.e., the Plaintiff in the Suit, present in Court on that date. It was thus that he submitted, the said Notice of Motion seeking restoration of the Suit was filed by the Appellant's Advocate under the provisions of Order IX Rule 9 of the Code of Civil Procedure, 1908.

4. Mr. Patil then pointed out from the impugned order that the sole ground on which the Notice of Motion came to be dismissed was that it was signed and verified by the Advocate for the Plaintiff, and not by an authorised officer of the Plaintiff-Society.
5. Mr. Patil then placed reliance upon the decision of the Hon'ble Supreme Court in the case of *Ananta Pandu Porobo Desai & Ors. v. Smt. Lalita Poi*<sup>1</sup>, which, *inter alia*, held that the very Advocate who appeared for the Plaintiff in the Suit is entitled to move an application for restoration on the strength of the existing vakalatnama.
6. I have also considered the explanation furnished for the non-appearance on 19<sup>th</sup> July 2013, and I find that it constitutes sufficient cause. It is also well settled that matters ought, as far as possible, to be decided on merits rather than be defeated by technicalities. In the present case, particularly when the Defendant had not entered

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<sup>1</sup> (1978) 2 SCC 681 (1).



appearance, the ends of justice would clearly warrant restoration of the Suit and giving the Appellant an opportunity to prosecute the same on merits.

7. Hence, for the aforesaid reasons, the captioned Appeal from Order is allowed, and the Order dated 4<sup>th</sup> May 2016 passed in Notice of Motion No. 3050 of 2013 filed in S.C. Suit No. 3199 of 2012 is set aside.

**[ARIF S. DOCTOR, J.]**