

IN THE HIGH COURT OF JUDICATURE OF BOMBAY,
BENCH AT AURANGABAD

**CIVIL APPLICATION NO. 1674 OF 2015
IN
SECOND APPEAL NO. 501 OF 2004**

Mahaling S/o Pandhari Teli ... Applicant

Versus

Radhabai S/o Narayan Teli
& another ... Respondents

.....
Mr. Ajinkya Kale , Advocate holding for
Mr. S.B. Talekar, Advocate for Applicant

.....
CORAM : RAVINDRA V. GHUGE, J.

DATED : 19th MARCH, 2015

PER COURT :

1. I have heard the learned Advocate for the applicant for quite some time.
2. Delay of one year and eight days in lodging the Second Appeal was condoned by this Court by order dated 09-10-2003, on Civil Application No. 3728 of 1991.

3. On 24-04-2008, none appeared for the applicant/appellant. This Court has recorded that none were present even on 26-03-2008 and 09-04-2008.

4. The Second Appeal was, therefore, dismissed for non-prosecution on 24-04-2008.

5. The order passed by this Court on 24-04-2008 is as under :-

(Coram :- P.R. Borkar, J.)

No one present for either side when matter is called out.

No one was present on 26-03-2008 and 09-04-2008.

Appeal dismissed for non-prosecution.

6. This application for restoration of Second Appeal has been belatedly filed. Delay caused is 2434 days (about seven years). Reason cited for condonation of delay is the Medical certificate placed on record, issued by the Rural Hospital, Ter, Tq. & Dist. Osmanabad dated 23-12-2014, indicating that the applicant is old, has Asthma and hearing problem. Request is that the delay of 2434 days be condoned and the Second Appeal be restored.

7. Office remark indicates that part-C and D of the Second Appeal have been destroyed due to passage of long time.

8. It is also revealed from the record of these proceedings that this Court has observed in its order dated 02-12-1992 on Civil Application No. 3728 of 1991 that the possession of the suit property has already been handed over to the Decree Holder (DH) on 05-12-1991. The Interim order passed on the application on 06-12-1991 was, therefore, vacated by the said order dated 02-12-1992.

9. The order passed by this Court on 02-12-1992 on Civil Application No. 3728 of 1991 in Second Appeal (ST)No. 17982 of 1991 reads under :-

Heard the learned Advocate for the respondent applicant. None present for the appellant. My attention is drawn to the report by the Joint Civil Judge, Osmanabad dated 10-12-1991 wherein it is stated that the possession of the suit property was already handed over to decree holder on 05-12-1991 by the Bailiff of the Court. Hence, the interim order passed on Civil Application No. 3729 of 1991 dated 06-12-1991 become infructuous. Hence vacated.

02-12-1992

Sd/-
Dy. Registrar.

10. Considering the fact situation as it emerges from the record and with due circumspection, I do not find that this Civil Application deserves to be entertained. Reasons cited do not support the request for condonation of 2434 days delay seeking restoration of Second Appeal No. 501 of 2004. So also, the applicant is without any interim relief. The suit property is already handed over to the DH. No purpose would be served by restoring the Second Appeal.

11. As such, this Civil Application is rejected.

(**RAVINDRA V. GHUGE, J.**)