

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

**CIVIL APPLICATION NO. 1128 OF 2015
IN
CIVIL APPLICATION NO. 8064 OF 2012
IN
WRIT PETITION NO. 1188 OF 2009**

SYED MUZAFARUDDIN SYED AMIRUDDIN
AND ORS.

V/S

SYED JANNAT BEE SYED NOOR AND ORS.

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Mr. A.A.Khan, Advocate for Applicants.

Mrs. S.S.Kazi, Advocate for R – 1 to 3.

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CORAM : V.M.DESHPANDE, J.

DATE : 2nd MARCH, 2015

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PER COURT :

1. Civil Application No. 8064 of 2012 is an application for restoration of Writ Petition No. 1188 of 2009. Civil Application No. 1128 of 2015 is an application for condonation of delay in preferring Civil Application No. 8064 of 2012.

2. Writ Petition No. 1188 of 2009 was dismissed for non compliance of the order passed by this Court on 27/01/2012. On 27/01/2012 the Writ Petition was listed for removal of office objection. This Court passed order on the said date that the office objection be removed before 09/03/2012, failing which the matter shall stand dismissed.

3. It is clear that on 27/01/2012, the counsel appearing for the petitioner was not present and, therefore, he was not having the knowledge of the conditional order passed by this Court. The reason put-forth in the application for condonation of delay as well as in the application for restoration is that on 17/01/2012, the learned counsel representing the petitioner was not present before the Court since he was ill.

4. The substantive right of the petitioner shall not be shunted on the technical ground when the petition stands dismissed for non removal of office objection. The applicant has made out case for not remaining present on 27/01/2012.

5. In that view of the matter, Civil Application No. 1128 of 2015 is allowed. The delay caused in filing the application for restoration is hereby condoned.

Civil Application No. 8064 of 2012 is allowed. Writ Petition No. 1188 of 2009 is restored to the file.

The learned counsel for the applicant submitted that his client will pay ₹ 1,000/- [Rupees One Thousand] towards cost to the learned counsel for the respondent.

Hence, the applicant to pay cost of ₹ 1,000/- to the learned counsel for the respondent. The cost to be paid within a period of 8 days from today.

[V.M.DESHPANDE, J.]