

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

**BENCH AT AURANGABAD**

**912 APEAL FROM ORDER NO. 110 OF 2014**

**MANSUKHLAL UTTAMCHAND CHEGEDIA THR LRS VIMALBAI AND ORS  
VERSUS  
SAJARAM GANGARAM MOKATE THR LRS VIJAYKUMAR SAJARAM MOKATE**

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**Advocate for Petitioners : Mr. Bedre Vinayak Sudhakar**

**Advocate for Respondent : Mr. A. M. Gholap**

**CORAM : A. M. BADAR, J.**

**DATE : 09th December, 2015**

**PER COURT :**

1. By this appeal, the appellant, original plaintiff, is challenging the order dated 26th November, 2012 passed by the learned District Judge, Ahmednagar in application CMA No.213/2006 by which his application for delay in filing application for restoration of appeal came to be rejected.

2. Facts are thus:

Plaintiff Mansukhlal filed suit for perpetual injunction in respect of land bearing Gat No. 724/02 of village Mhaisgaon Taluka Rahuri Dist. Ahmednagar against respondents herein. The said suit was dismissed on merits. The decree was carried in appeal by filing appeal bearing No.39/99. Due to absence of appellant/plaintiff

Mansukhlal, it was dismissed in default. Thereafter appellant/plaintiff filed application for restoration of the said appeal dismissed on 16.11.2002. The application for restoration accompanied with an application for condonation of delay came to be filed on 30.11.2006. Ultimately, after hearing the parties, learned Appellate Court came to the conclusion that reasons stated for condonation of delay in filing an application for restoration does not constitute sufficient cause and therefore application for condonation of delay came to be rejected.

3. Heard learned counsel appearing for both the parties. Perused the impugned order. It is seen that reason put forth for seeking condonation of delay in filing of application for restoration is to the effect that the appellant/ plaintiff was suffering from jaundice. Learned appeal court held that appellant/ plaintiff is having major sons and jaundice cannot prevent a person from appearing before the Court for a period of about four years. Per se, it cannot be said that the learned Appellate Court erred in rejecting the application for condonation of delay in filing the application for restoration. However, it is seen that

dispute between the parties is in respect of immovable property i.e. land bearing Gat No. 724/02 of village Mhaisgaon. As such, interest of justice would be served by saddling some cost as, it is primary function of the Court to adjudicate the dispute on its merits. Hence the appeal deserved to be allowed with following order:

- i. Impugned order dated 26.11.2012 passed by the learned District Judge, Ahmednagar in CMA No. 213/2006 is quashed and set aside on condition that appellant should pay cost of Rs.20,000/- (Rupees twenty thousand only) to respondents within a period of one month from today.
- ii. Considering the reasons stated in the application for condonation of delay in filing of application for restoration of appeal, the same is allowed.
- iii. Parties are directed to appear before the learned Appellate Court on 21.12.2015. The learned Appellate Court is requested decide the application for restoration of appeal within a period of one month thereof.
- iv. Appeal from order is accordingly disposed of.

( A. M. BADAR, J. )

JPC