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

CIVIL APPLICATION NO. 5391 OF 2013
IN SA/28/1986
WITH
CIVIL APPLICATION NO.5392 OF 2013
IN SA/28/1986

PATINGRAO BALA CHAVAN THR LRS TEJIM AND ORS
VERSUS
BAPU TATYA CHAVAN AND ORS

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Advocate for Applicants : Mr.Chaudhari Nitin K.

Advocate for Respondents : Mr.R.G.Joshi, R/1 & R/2.
Mr.S.G. Shinde for R/3 and R/4.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 18th April, 2015

Per Court:

(a) Civil Application No.5391/2013:-

1 All the Respondents in this Civil Application are served.

2 Second Appeal No.28/1986 was admitted by order dated 25.04.1986 and the substantial question of law was framed. The said Second Appeal was dismissed in default since no steps were taken by the Appellants with regard to the unserved Respondents.

3 By this Civil Application, the Applicants pray for condonation of delay of 2429 days caused in filing the application for seeking restoration of the Second Appeal.

4 The reasons in support of the prayer for condonation of delay and the circumstances which explain the delay are set out in the Civil Application. It is stated that the delay is not intentional or deliberate much less willful. The Applicants do not derive any advantage from causing the delay. The Second Appeal is the last available remedy to the Applicants and if the Appeal is not restored, the doors of litigation will be closed on the Applicants.

5 Learned Advocate appearing for Respondent Nos.1 and 2 has placed on record an affidavit in reply. The application is opposed for the reason that the delay is inordinate. The reasons put forth are unbelievable. This application is filed for avoiding the execution proceedings and the same be dismissed with costs of Rs.25,000/-.

6 Having considered the rival submissions and the contentions and averments set out in the application and the affidavit in reply, I find that since the Second Appeal was admitted and the deceased Appellant was litigating for decades, ends of justice would be met by restoring the

Second Appeal. However, costs need to be imposed on the Applicants.

7 In the light of the above, the Civil Application is allowed. Delay of 2429 days is condoned subject to the Applicants depositing costs of Rs.4000/- (Rupees Four Thousand) in this Court within a period of FOUR WEEKS from today. The order of dismissing the Second Appeal in default is recalled. The Second Appeal is restored to the file at the stage at which it was dismissed in default.

8 After depositing costs, the Respondents shall be at liberty to withdraw the said amount in equal proportion.

9 In the event of non compliance of this order, the same shall stand recalled, the Civil Application shall stand rejected and the order dismissing the Second Appeal in default shall stand restored.

(b) Civil Application No.5392/2013:-

1 This Civil Application is filed for condonation of 3815, 7313 and 993 days' delay caused in bringing the legal heirs of the deceased Appellant Nos.2, 3 and 4, respectively, on record.

2 For the reasons assigned while allowing Civil Application

No.5391/2013 by the above order passed today, this Civil Application is also allowed. Delay caused in bringing the legal heirs of the deceased Appellant Nos.2, 3 and 4, is condoned subject to the Applicants depositing costs of Rs.4000/- (Rupees Four Thousand) in this Court within a period of FOUR WEEKS from today. The legal heirs of the deceased Appellant Nos.2, 3 and 4 be brought on record within TWO WEEKS from the date of depositing the costs.

3 After depositing costs, the Respondents shall be at liberty to withdraw the said amount in equal proportion.

4 In the event of non compliance of this order, the same shall stand recalled, the Civil Application shall stand rejected and the order dismissing the Second Appeal in default shall stand restored.

(RAVINDRA V. GHUGE, J.)