

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

Appeal From Order No. 100 of 2015

Rekha w/o. Murlidhar Patil,
Age : 51 years,
Occupation : Agriculture,
R/o. Kathore (Kh),
Taluka : Bhusawal,
District : Jalgaon.

.. Appellant.

versus

Suresh s/o. Bhagwat Mahajan,
Age : 46 years,
Occupation : Agriculture,
R/o. Hatnur,
Taluka : Bhusawal,
District : Jalgaon.

.. Respondent.

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*Mr. S.B. Yawalkar, Advocate, holding for
Mr. Vinod P. Patil, Advocate, for the appellant.*

*Mr. Prakashsingh B. Patil, Advocate, for the
respondent (caveator).*

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CORAM : A.M. BADAR, J.

DATE : 7TH DECEMBER 2015

COURT'S ORDER :

1. This is an appeal by unsuccessful defendant. The order dated 12th August 2015, passed by the learned District Judge-2, Bhusawal

[District : Jalgaon], below Exhibit 1 in Civil Miscellaneous Application No. 9/2015, thereby rejecting the application for condonation of delay in filing an application for restoration of appeal which was dismissed in default, is challenged.

2. Heard the learned Counsel appearing for both the parties and perused the impugned order.

3. The respondent had filed suit for specific performance of contract in respect of field Gut No. 50/1 admeasuring 2 Hectares 9 Ares. That suit was decreed. For challenging that judgment and decree, the defendant filed Regular Civil Appeal bearing No. 616/2014. It was dismissed in default on 24-11-2014 as despite chances, the appellant / original defendant failed to pay court-fee stamps within stipulated period.

4. The defendant / present appellant filed an application for restoration of that appeal accompanied by an application for condonation of delay of 36 days. After hearing both the parties, the learned District Judge-2, Bhusawal, rejected the same by the impugned order with an observation that reasons put forth by the defendant that her husband was ill and daughter-in-law was pregnant, not sufficient to condone the delay.

5. It is seen that the present appellant / defendant was not diligent in prosecuting her remedy as on earlier occasion, when the matter of condonation of delay came up before this Court, costs of Rs. 10,000/- was imposed on her. Again the appellant / defendant did not comply directions of the Court in the matter of payment of court-fees resulting in

dismissal of her appeal. The delay occasioned in applying for restoration is 36 days. The decree is for specific performance of contract. The property involved is agricultural field Gut No. 50/1 admeasuring 2 Hectares 9 Ares situated at village Savtar [Taluka : Bhusawal, District : Jalgaon]. Considering the nature of decree sought to be challenged, I am of the opinion that one more last chance needs to be granted to the present appellant / original defendant for prosecuting her appeal challenging the decree. Primary function of the Court is to adjudicate the disputes on its own merits rather than adhering to the technicalities of law. The inconvenience caused to respondent herein / original plaintiff can be taken care of by awarding some costs.

6. Hence, I pass the following order :-

- (a) The Appeal From Order is allowed.
- (b) Impugned order dated 12th August 2015, passed by the learned District Judge-2, Bhusawal [District : Jalgaon], below Exhibit 1 in Civil Miscellaneous Application No. 9/2015, between the parties is quashed and set aside.
- (c) The application for condonation of delay of 36 days in filing an application for restoration of appeal is allowed, on condition that the appellant - original defendant should pay court-fees within a period of two weeks from today and she should also pay costs of Rs. 7,500/- to the respondent - original plaintiff within that time.

(4)

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(d) The application for restoration of appeal be decided within a period of one month from today and if ultimately the same is allowed, the learned appellate Court is requested to decide the appeal as far as possible within a period of six months thereafter.

(e) Parties are directed to appear before the learned District Judge-2, Bhusawal, on 22nd December 2015.

7. The Appeal From Order is accordingly disposed of.

(A.M. BADAR)
JUDGE

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