

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
APPEAL FROM ORDER NO.1 OF 2015
WITH
CIVIL APPLICATION NO.154 OF 2015

Chandrakant Bhagwat Wani
and ors.

..Appellants/
Applicants

Versus

Ganpat Gangaram Pail
since deceased through
Legal Heirs

..Respondents

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Mr.P.B.Gamot, advocate for appellants

Mr.S.P.Bramhe, advocate for respondents

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CORAM : M.T. JOSHI, J.

DATE : APRIL 08, 2015

PER COURT :

Heard both sides.

2] Aggrieved by the rejection of the application
for restoration of the appeal, which was dismissed
in default, the present appeal is preferred.

3] Civil Appeal No.224 of 2007 filed by the present appellants was dismissed in default on 19.08.2013. The present appellants, thereafter, filed an application for restoration of the appeal on 23.07.2014, however, no application for condonation of delay was filed.

4] The learned District Judge, however, has considered the oral pleas of the present appellants for condonation of delay and on merit, held that since the application for condonation of delay was not filed, the application was not tenable.

5] Perused the papers. Upon hearing both sides, considering the fact that substantial immovable property is in dispute, the impugned order deserves to be set aside.

6] Hence, the following order :-

a] The impugned order is hereby set aside. The Civil Misc. Application No. 172 of 2014 is hereby restored.

b] Liberty to file the application for condonation of delay before the concerned learned District Judge, is hereby granted. The application for condonation of delay be filed in said proceedings within a period of eight (8) weeks from the date of this order.

c] The appellants are directed to pay costs of Rs.5,000/- (Rs.Five thousand) to the respondents, which be deposited in the concerned District Court within a period of eight (8) weeks from the date of this order.

d] Upon deposit of costs, the application for condonation of delay as well as the application for

restoration of Civil Appeal be heard by the learned District Judge and order be passed on its merits.

e] Parties are directed to appear before the concerned District Court on 8th June, 2015.

f] Present Appeal from Order is disposed of accordingly. In view of this, Civil Application does not survive and stands disposed of as such.

[M.T. JOSHI, J.]

kbp