

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

CIVIL APPLICATION NO.226 OF 2014
WITH
CIVIL APPLICATION NO.227 OF 2014
IN
SECOND APPEAL NO.194 OF 1988

Dattu Babaji Shinde by his heirs and
legal representatives .. Applicants.

V/s

Maruti Krishna Shinde and ors. .. Respondents.

Mr. P.S. Gole, for the Applicants.

Mr. Dilip Bodake, for the Respondent Nos. 1 to 4.

CORAM : RAVI K. DESHPANDE, J.

DATED : 17th JULY, 2015

P.C.

1. This application seeks condonation of the delay of 8 years and 7 days in filing the application for restoration of the Second Appeal, which was dismissed by the conditional order dated 29th September, 2005. The Second Appeal was admitted and the substantial question of law was framed. It is found that the record of the Second Appeal is destroyed. Though the Memorandum of Appeal is on record, the

judgments of the Courts below are not on record. It is, therefore, not possible to adjudicate the matter on merits.

2. This Court had initially passed the order on 17th April, 2015 as under : -

“1. Heard Mr. Pradeep Gole, learned counsel for the applicants and Mr. Dilip Bodake, the learned counsel for the respondents.

2. Stand over to 19.6.2015. In the meantime, the applicants shall reconstruct papers and proceedings of Second Appeal and serve copy in advance on the other side.”

3. Thereafter, from time to time the extension was granted to file the reconstructed record. In spite of grant of time, the appellants have failed to reconstruct the record and the learned counsel appearing for the appellants submits that the applications for obtaining the certified copy of the orders

have already been filed. It is not possible now to grant further extension in the matter to reconstruct the record.

5. In view of above, the Civil Application is dismissed with liberty to the applicants to file fresh application for restoration by making statement on affidavit that they have obtained the certified copies of the orders and reconstructed the record. The dismissal of this Civil Application will not come to their way.

CIVIL APPLICATION NO.227 OF 2014

1. In view of dismissal of the above Civil Application, this Civil Application will not survive. However, a liberty is granted to the applicants to move such an application, as and when such occasion arises.

(RAVI K. DESHPANDE, J.)