

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.162 of 2015

And

Civil Application No.1053 of 2011

In

Second Appeal Stamp No.11056 of 2011

(Sampatrao Dhondiba Shinde, since deceased, through his LRs. Rajesh
Sampat Shinde v. Smt. Shailadevi Shankarrao Desai, since deceased,
through her LRs. Smita Amit Chalukya and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri Sanskar Marathe i/b Shri M.S. Karnik, Advocates for
Applicant/Appellant.

Coram : R.K. Deshpande, J.

Dated : 29th July, 2015

1. The applicant is the original defendant No.1, and Regular Civil Suit No.29 of 1988 filed against him was decreed, granting permanent injunction restraining him from disturbing the possession of the plaintiff over the suit property. Regular Civil Appeal No.331 of 2002 has been dismissed on 18-11-2010. Hence, this second appeal was preferred along with the application for condonation of 53 days' delay caused in filing an appeal.

2. The notices were issued to the respondents on the application for condonation of delay. The contesting respondent, who is the original plaintiff, was served. He filed the reply opposing the application for condonation of delay. Pending this application, the matter was dismissed by conditional order

dated 22-2-2012 for non-compliance of service upon the respondent Nos.2, 4 and 6. Civil Application No.162 of 2015 has been filed for restoration of Civil Application No.1053 of 2011 along with the condonation of delay of 1 year and 322 days.

3. It is apparent that the contesting respondent was the original plaintiff in whose favour the Trial Court passed a decree. She was served and the reply is filed opposing the application for condonation of delay. In view of this, Civil Application No.1053 of 2011 could not have been dismissed as abated in its entirety. The reasons are given for the delay caused in filing the application for restoration and I am satisfied that a sufficient cause is made out.

4. Hence, Civil Application No.162 of 2015 is allowed. Civil Application No.1053 of 2011 along with Second Appeal Stamp No.11056 of 2011 is restored.

5. None appears for the respondents in Civil Application No.1053 of 2011. After going through the contents of the application and the reply filed by the original plaintiff, I am satisfied that a sufficient cause is made out for condonation of 54 days caused in filing the second appeal.

6. Hence, Civil Application No.1053 of 2011 is allowed. The delay caused is condoned. The civil application stands disposed of.

7. In order to provide an opportunity to the respondents to defend the matter, put up the second appeal for admission on 5-8-2015.

Judge.