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IN THE HIGH COURT OF JUDICATURE AT MUMBAI
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 575 OF 2015
IN
SECOND APPEAL NO. 327 OF 1992

Govind Ramu Tendolkar and another .. Applicants

Vs.

Dattu Laxman Chavan
(Since deceased by his legal heirs)
Smt.Rukmini w/o Dattu Chavan and others .. Respondents

Mr.Rajesh N.Kachare, Advocate for the Applicants.
Mr.M.Kale a/w Mr.A.M.Sharma i/b M/s.M.PVashi & Associates,
Advocates for the Respondents No. 1a to 1e.

CORAM : R. G. KETKAR, J.
DATE : 24th APRIL, 2015

P.C. :

. Heard Mr.Rajesh N.Kachare, learned Counsel for the applicants and Mr.M.Kale, learned Counsel for the respondents No.1a to 1e.

2. This is an application for condonation of delay of 10 years and 20 days in filing the Civil Application and for extension of time stipulated in the order dated 03/02/2005. By order dated 06/07/1992, appeal was admitted. By order dated 03/02/2005, printing was dispensed with. The Advocate for the applicants was directed to file private paper book within 6 months, failing which Second Appeal was to stand dismissed for want of prosecution

without reference to the Court. Mr.Kale opposes the application on the ground that applicants did not challenge the order dated 03/02/2005. They did not file private paper book within 6 months. No sufficient cause is made out for condoning the delay of 10 years. He, therefore, submitted that application deserves to be dismissed.

3. On the other hand, Mr.Kachare submitted that appeal was admitted on 06/07/1992 as grounds No. 5 & 6 raise substantial questions of law. By order dated 03/02/2005, this Court directed the Advocate for the applicants to file private paper book within 6 months from the date of the order, failing which appeal was to stand dismissed. In the case of *Kalipada Das Vs.Bimal Krishna Sen Gupta*, **(1983) 1 Supreme Court Cases 14**, the Apex Court considered the question as to whether the appellant-tenants who undoubtedly failed to comply with the Court's order to supply the paper-books within the prescribed time should be visited with such serious consequences of a penal nature as described by the High Court itself. Supplying paper-books is a procedural requirement devised to facilitate rendering justice. In other words, it is a procedural step in aid of justice and not substantive justice itself. Mr.Kachare submitted that pursuant to the order dated 01/04/2015, he already filed private paper book and served copy on the other side. In view thereof and in view of decision of the Apex Court in the case of **Kalipada Das** (*supra*), I am satisfied that applicants have made out a sufficient

cause of condoning the delay and for restoration of the Second Appeal. Hence, time stipulated in the order dated 03/02/2005 for filing of private paper book is extended till 06/04/2015. The application is allowed in terms of prayer clauses (i) & (ii) with no order as to costs. Second Appeal is restored to the file of this Court at its original number and position.

(R. G. KETKAR, J.)