

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.243 OF 2014
IN
REVIEW PETITION NO.20130 OF 2012
IN
SECOND APPEAL NO.89 OF 2011
WITH
CIVIL APPLICATION NO.41 OF 2015**

Sumati Yeshwant Mulye (deceased) & Ors. ..Applicants

Vs.

Sunanda Kashinath Desai & Ors. ..Respondents

Mr. G. T. Kanchanpurkar for the Applicants

**CORAM : R. M. SAVANT, J.
DATE : 23rd MARCH, 2015**

P.C.

1 The above Civil Application has been filed for restoration of the above Review Petition which has stood dismissed on the ground that the Applicants have not filed an application for condonation of delay in filing the Review Petition. It is the case of the Applicants that there is no delay in filing the Review Petition as according to the Learned Counsel for the Applicants though the order was passed on 3-2-2012 and an application for certified copy was made by the Applicants on 10-2-2012, the certified copy was made available only on 4-4-2013. However, the Review Petition has been filed much

prior thereto i.e. on 24-7-2012, hence having regard to Section 12(2) of the Limitation Act, since the certified copy was received on 4-4-2013 and though a period of one week would have to be deducted from the period available for filing the Review Petition, there is no delay in filing the Review Petition.

2 The office has opined that there is a delay on the basis of Rule 23(i) of Chapter IV of the Appellate Side Rules. The office has however not considered Section 12(2) of the Limitation Act which specifically provides for exclusion of the period between the date of pronouncement of the order till certified copy of the order is obtained. In so far as Rule 23 of Chapter IV of the Appellate Side Rules, which provides that a certified copy is not necessary for filing of a Review Application. It would be necessary to consider the aspect of filing of the Review Petition, having regard to the dates. The certified copy was made available on 4-4-2013, hence in terms of Section 12(2), the Review Petition was required to be filed by 27-4-2012 as the period of one week would have to be deducted from the period available for filing the Review Petition as that was the time spent by the Applicants for applying for the certified copy. However, in the instant case, the Review Petition being filed much prior to the said date i.e. on 27-4-2012, there is therefore obviously no delay in filing the Review Petition. Hence the above Civil Application would have to be allowed and is accordingly allowed, resultantly the Review Petition is restored to file. The Civil Application No.243 of 2014 is accordingly disposed of.

3 In so far as Civil Application No.41 of 2015 is concerned, in view of the order passed in Civil Application No.243 of 2014, the same has turned infructuous and to accordingly stand disposed of as such. List the Review Petition for hearing on 6-4-2015.

[R.M.SAVANT, J]