

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

**CIVIL APPLICATION NO. 1467 OF 2013
IN
SECOND APPEAL NO. 323 OF 1992**

Shri. Shrikant Anandao Mane,
since deceased through L.R.s ... Applicants.

V/s.
Laxman Balvant Kakade
since deceased through L.R.s ... Respondents

Mr. V.S. Talkute for the applicants.
Mr. Abhay Anturkar i/b S.B. Deshmukh for the respondent no.2

**CORAM : K. K. TATED, J.
DATED : 21/08/2015.**

PC.:

. Heard learned Counsel for the applicants and learned Counsel for the respondent no.2.

2 Office note shows that the Civil Application stands dismissed against respondent no.1(a), 1(f) and 1(i).

3 This application is for restoration of Second Appeal no. 323 of 1992 which was dismissed in view of conditional order dated 29.08.2009 passed by this Court directing the applicants to remove all office objections.

4 The learned Counsel for the applicants submits that inadvertently, it remained on their part to remove all office objections. He submits that as soon as the applicants learnt about the dismissal of

Second Appeal for non removal of office objections, they immediately contacted their earlier Advocate. Thereafter, they appointed the present Advocate for filing the Civil Application and for removal of office objections.

5 The learned Counsel for the applicants submits that they have good chance of success in the present Second Appeal. He further submits that if Second Appeal is not restored, irreparable loss and injury will be caused to the applicants. In support of these contentions, the learned Counsel for the applicant relied on the averments made in paragraphs 4 and 5 of Civil Application.

6 On the other hand, the learned Counsel for Respondent no.2 vehemently opposed the Civil Application. The Respondent no.2 filed their affidavit-in-reply. The learned Counsel for the respondent no.2 submits that the applicants has not disclosed the name of the earlier Advocate, who failed to remove office objections within stipulated time. He further submits that the applicants have not shown sufficient cause for condonation of near about 4 years delay in preferring the present Civil Application. He submits that for want of sufficient cause for condonation of delay, the Court should dismissed the Civil Application.

7 I heard both the sides at length. Admittedly, because of mistake on the part of the earlier Advocate, who failed to remove office objections, the Second Appeal stands dismissed in view of conditional order dated 29.08.2009. Because of mistake on the part of the Advocate, the litigants should not be suffered.

8 Considering these facts and the reasons disclosed by the learned Counsel for the applicants in paragraphs 4 and 5 of Civil Application, I am satisfied that applicant has made out case for allowing the Civil Application. At the same time applicants have to pay cost of Rs.5,000/- to the respondent no.2.

9 Hence, the following order is passed:

- a) Second Appeal no. 323 of 1992 is restored on file.
- b) Applicants to remove all office objections as per earlier order dated 29.08.2009 on or before 30.09.2015, failing which civil application shall stand dismissed without referring back to the court .
- c) If all office objections are removed within stipulated time as stated herein above, the applicants to serve the remaining Respondents except Respondent nos. 1(a), 1(f) and 1(i) either by registered post A.D. and/or by hand delivery and file Affidavit of Service to that effect.
- d) Applicants either to pay Rs.5000/- by way of cost to the Respondent no.2 or their Advocate or to deposit in the Registry within four weeks from today, failing which civil application shall stand dismissed without referring back to the court .
- e) Civil Application stands disposed of accordingly.

(K.K.TATED, J.)