

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

**CIVIL APPLICATION NO.1423 OF 2015
IN
SECOND APPEAL NO.149 OF 1999**

Shri Rambhau Raghu Sahane .. Applicant

Vs.

Shri Kondaji Raghu Sahane .. Respondent

Mr.PN.Joshi for the applicant

Mr.Harshad M. Inamdar for the respondent

**CORAM : K.K.TATED, J.
DATED : 06/10/2015**

PC:

1 Heard the learned counsel for the parties.

2 This application is for restoration of Second Appeal No.149 of 1999 which was dismissed for non-compliance of conditional order dated 9.1.2007 passed by this court directing applicant to file private paper book within 16 weeks.

3 The learned counsel for the applicant submits that advocate as well as Registered clerk were under the impression that the paper book was already filed. He submits that in the month of May, 2015, advocate for the applicant learnt from local advocate that respondent

filed application before the Tahsildar on or about 15.5.2015 and in that application, it was stated that main appeal stands dismissed. Thereafter, advocate for the applicant made enquiry and learnt that for non-filing of private paper book within stipulated time, matter stand dismissed. Thereafter, the applicant preferred the present Civil Application for condonation of delay and extention of time to file private paper book.

4 The learned counsel for the applicant submits that applicant has good chance of success in the present proceeding. He submits that in the interest of justice, this this Hon'ble Court be pleased to condone the delay in preferring Civil Application and allow the applicant to file private paper book. He submits that applicant undertakes to file private paper book within two weeks from today. He submits that if delay is not condoned, irreparable loss and injury will be caused to the applicant.

5 On the other hand, the learned counsel for the respondent vehemently opposed the present Civil Application. Respondent filed Affidavit-in-Reply dated 21.9.2015. The learned counsel for the respondent submits that applicant has not shown sufficient cause for condonation of more than 8 years in preferring the present Civil Application. He submits that during the pendency of the present proceeding, the applicant disposed of the suit property inspite of the status quo order passed by this court. Hence, respondents preferred Contempt Petition No.316 of 2012. He submits that during the pendency of the Contempt Petition, the applicant obtained re-conveyance of the suit property in his name. These facts are recorded

by this court at the time of passing order dated 22.9.2014 in Contempt Petition No.316 of 2012. He submits that considering this conduct of the applicant, this Hon'ble Court should not condone the delay in preferring the present Civil Application and not to restore the Second Appeal. He submits that applicant has not disclosed how they learnt July 2015 that Second Appeal stand dismissed. Hence, there is no substance in the present Civil Application and same to be dismissed with costs.

6 I have heard both the sides. There is no dispute that this court by order dated 9.1.2007 directed applicant to file private paper book within 16 weeks, failing which Second Appeal shall stand dismissed without referring back to the court. In the present Civil Application, applicant specifically stated that advocate on record as well as registered clerk were under the impression that the paper book was already filed in the Second Appeal. Because of mistake on the part of Advocate, Second Appeal stand dismissed. It is to be noted that because of mistake on the part of advocate litigant should not suffer. At the same time, respondent is required to be compensated by cost.

7 Considering these facts, I am of the opinion that applicant has made out a case for allowing the Civil Application but the applicant has to pay cost of Rs.5000 to the respondent within four weeks from today. Hence, following order is passed:

- a) Delay in preferring Civil Application is condoned.
- b) Second Appeal No.149 of 1999 is restored on

file for hearing on its own merits.

c) Time to file private paper book as per order dated 9.1.2007 passed by this court (Coram: D.B.Bhosale as he then was) is extended till 31.10.2015, failing which Civil Application shall stand dismissed without referring back to the court.

d) Applicant to pay cost of Rs.5000 to the respondent or their advocate within two weeks from today, failing which Civil Application shall stand dismissed without referring back to the court.

e) Civil application stands disposed off accordingly.

(K.K.TATED, J.)

CERTIFICATE

Certified to be true and correct copy of the original signed order.