

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

**CIVIL APPLICATION NO.1297 OF 2014
IN
APPEAL FROM ORDER NO.79 OF 1996**

Yusufali s/o. Ramzanali Rasekhinejad .. Applicant

vs.

IN THE MATTER BETWEEN :

Najma widow of Ramzanali Rasekhinejad
and Ors. .. Applicants

vs.

Ali Akbar son of Safarali
Rasekhinejad (since deceased) .. Respondents

Mr.Vishal Kanade i/b M/s.Divekar and Co. for the applicant
Mr.Sandeep Salunkhe i/b Ms.Nikita Sawant for the respondents

CORAM : K.K.TATED, J.
DATED : 09/06/2015

PC:

1 Heard the learned counsel for the parties.

2 This application is preferred by plaintiff for restoration of Appeal from Order No.79 of 1996 which was dismissed in view of conditional order dated 21.2.2005 and for bringing legal heirs on record of deceased respondent no.1, Ali Akbar son of Safarali Rasekhinejad who died in 2002.

3 The learned counsel for the applicant submits that the present Appeal from Order No.79 of 1996 was admitted by this court on 14.2.1996. He submits that thereafter matter appeared on board on 2.12.2005 for removal of office objections. At that time, no one appeared on behalf of applicant. He submits that this court passed conditional order directing applicant to remove all office objections within four weeks failing which Appeal from Order shall stand dismissed without referring back to the court. He submits that as office objections were not removed within stipulated time, Appeal from Order stand dismissed for default. Hence, plaintiff preferred present application for restoration of Appeal from Order.

4 The learned counsel for the applicant submits that earlier applicant appointed M/s.Gordhandas & Fozdar Solicitor Firm in Appeal from Order No.79 of 1996. He submits that partner of Solicitor Firm Advocate Shri Jagdish Engineer used to look after the present Appeal from Order. He submits that the said partner of Solicitor Firm expired in September, 2005. He submits that applicant learned about the dismissal of the Appeal from Order in the year 2013. Therefore, they appointed another advocate to take appropriate steps. He submits that for want of knowledge about the dismissal of Appeal from Order on 21.2.2005, applicant could not be able to take immediate steps for removal of office objections and or for filing application for restoration of the same. He submits that one more litigation i.e. Suit No.1789 of 1988 is pending in this court between the same party. In that suit, applicant preferred Chamber Summons No.805 of 2004 for bringing legal heirs on record of deceased respondent no.1. That Chamber

Summons was allowed by this court on 11.4.2005.

5 The learned counsel for the applicant submits that Advocate/Solicitor on record failed to prefer appropriate application in the present Appeal from Order for bringing legal heirs on record of deceased respondent no.1. He submits that because of mistake on the part of Advocate/Solicitor, litigant should not suffer. He submits that Appeal from Order appeared on board after more than 9 years for removal of office objections and that time, no one appeared on behalf of applicant. Therefore, there is sufficient cause for condonation of delay. In support of this contention, the learned counsel for the applicant relies on the Apex Court judgment in the matter of *Swami Prasad And Another vs. Lakhan Singh (Dead) and Others through Lrs. reported in (2010) 15 SCC 152*. He submits that in this matter the Apex Court has taken a view that because of long pendency of appeal, court should take a lenient view at the time of restoration of matter which was dismissed for default. On the basis of these contentions, the learned counsel for the applicant submits that this Hon'ble Court be pleased to condone the delay in preferring the present Civil Application and restore Appeal from Order on file for hearing on its own merits. He submits that this Hon'ble Court be pleased to allow the applicant to bring legal heirs on record of deceased respondent no.1. He submits that if present Civil Application is not allowed, irreparable loss and injury will be caused to the applicant. He submits that applicant has a good chance of success in the present matter.

6 On the other hand, the learned counsel for the respondent

vehemently opposed the present Civil Application. He submits that applicant has not shown sufficient cause for condonation of more than 8 years delay in preferring the present Civil Application for restoration of Appeal from Order and more than 11 years delay for bringing legal heirs on record of deceased respondent no.1. He submits that applicant appointed Solicitor Firm to prosecute the present Appeal from Order. He submits that in the Solicitor Firm there are several partners. Therefore, the reason given by the applicant that their concerned Solicitor / Advocate Mr.Jagdish Engineer died in September, 2005 cannot be considered as sufficient cause for condonation of more than 8 years delay.

7 The learned counsel for the respondent further submits that the applicant preferred Chamber Summons No.805 of 2004 in Suit No.1789 of 1988 for bringing legal heirs on record of deceased respondent no.1 Ali Akbar son of Safarali Rasekhinejad Ali. He submits that Chamber Summons was allowed by this court on 11.4.2005. He submits that this itself shows that the applicant had knowledge about death of respondent no.1. In spite of that they failed and neglected to take appropriate steps in the present Appeal from Order for preferring appropriate application for bringing legal heirs on record. He submits that as applicant failed to show sufficient cause for condonation of delay, court should not entertain the present Civil Application and same be dismissed with costs.

8 I have heard both the sides at length. It is to be noted that in the present proceeding, Appeal from Order appeared on board on 4.2.2005. At that time, this court (Coram: A.S.Oka, J.) granted time till

21.2.2005 to remove all office objections. Thereafter, again matter appeared on board on 21.2.2005. At that time, this court granted four weeks time to remove all office objections failing which matter shall stand dismissed for want of prosecution without referring back to the court. In spite of these two orders, applicant failed and neglected to remove office objections within stipulated time. It is to be noted that applicant has appointed Solicitor Firm having several partners. Therefore the reason given by the applicant in paragraph 7 of Civil Application that concerned Advocate who was looking after the matter expired in September, 2005 cannot be treated as sufficient ground for condonation of more than 8 years delay.

9 In the present proceeding, respondent no.1 expired in 2002. Thereafter applicant preferred Chamber Summons in Suit No.1789 of 1988 in Suit No.1789 of 1988 for bringing legal heirs on record of deceased respondent no.1. That Chamber Summons was allowed by this court on 11.2.2005. This shows that they had knowledge about the death of respondent no.1. In spite of that they failed to prefer appropriate application in the present proceeding for bringing legal heirs on record of deceased respondent no.1. The Authority cited by the counsel for the applicant in the matter of Swami Prasad And Another vs. Lakhan Singh (Dead) and Others through Lrs. is not applicable in the facts and circumstances of the present case.

10 Considering these facts, I do not find any substance in the present Civil Application. Civil Application stands rejected.

(K.K.TATED, J.)