

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

**CIVIL APPLICATION NO. 1651 OF 2014
(for restoration)**

IN

**CIVIL APPLICATION NO. 512 OF 2014
(for delay)**

IN

REVIEW PETITION NO. 29 OF 2014

IN

SECOND APPEAL NO. 277 OF 2013

1. Shri Vilas Eknath Kapare ... Applicants.
2. Smt. Surekha Vilas Kapare (Deceased):
Legal Hairs:2a) Shri Vilas E. Kapare & Ors.

V/s.

- 1.Smt. Anjanabai Kaluram Mapare (Deceased)
2. Smt. Vijaya Shivram Mapre
(deceased through LR's.)
3. Shri Dhananjay S. Mapre
4. Shri Sanjay S. Mapre.
5. Vaishali Prashant Magar ... Respondents.
(as per amendment carried out)

Mr. Nilesh Wable, Advocate for the Applicants.
Mr. R. N. Sanghavi, Advocate for Respondent Nos. 2 to 4.
Mr. Akshay P. Shinde, Advocate for Respondent No.5.

**CORAM : K. K. TATED, J.
DATE : 29th SEPTEMBER, 2015**

P.C. :

- 1 Heard the learned counsel for the parties.

2 The civil application no. 1651 of 2014 is preferred by the applicants (original defendants) for recalling of the order dated 13th October, 2014 passed by this court (Coram : A. B. Chaudhari, J.) in Civil Application No. 512 of 2014, by which the said application for condonation of delay in filing the review petition has been rejected.

3 The learned counsel for the Applicants submits that the Advocate on record for the Applicants had met with an accident on 6th October, 2014 and thereafter, he was taking treatment at Pune from 8th October, 2014 till 3rd December, 2014. To that effect, the applicant has filed additional affidavit dated 15th September, 2015. He submits that because of the personal difficulty of the Advocate on record, he was unable to attend the court. Learned counsel for the applicants submits that in the interest of justice, this court be pleased to recall the order dated 13th October, 2014 and hear the civil application no.512 of 2014 on its own merits. He submits that if the application is not allowed, an irreparable loss will be caused to the applicants. He submits that the applicants have good chances of success in the present proceedings.

3 On the other hand, the learned counsel Mr. Sanghavi, appearing on behalf of the respondent nos. 2 to 4, has opposed the present civil application. He submits that the applicants have not shown sufficient cause for allowing the

present civil application and hence, the civil application deserves to be dismissed with costs.

4 Considering the submissions made by the learned counsel for the applicants and the averments made in the additional affidavit dated 15th September, 2015, I am of the opinion that the applicants have made out a case for allowing the civil application. At the same time, the applicants will have to pay cost of Rs.10,000/- to the Respondent Nos. 2, 3 and 4 or their Advocate within our weeks from today; failing which the civil application shall stand dismissed without referring back to the court. Hence, following order is passed :

- i. This civil application is allowed.
- ii. The delay, if any, in filing the civil application is condoned.
- iii. The order dated 13th October, 2014 passed by this court (Coram : A. B. Chaudhari, J.) in Civil Application No. 512 of 2014 is recalled.
- iv. Civil application No. 512 of 2014 is restored to file for hearing on its own merits.

5 The civil application no. 1651 of 2014 stands disposed of accordingly.

(K. K. TATED,J.)

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CERTIFICATE

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