

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

**CIVIL APPLICATION NO.22 OF 2015
IN
FIRST APPEAL NO.1969 OF 2007**

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders.
---	----------------------------

Mr.Pramod N. Joshi for the applicant

Mr.M.S.Gandhave for respondent no.1

**CORAM : K.K.TATED, J.
DATED : 06/02/2015**

PC:

- 1 Heard the learned counsel for the parties.
- 2 This applicant is preferred by the defendant for restoration of First Appeal No.1969 of 2007 which was dismissed in view of conditional order dated 30.11.2007 passed by this court at the time of admission i.e. filing of private paper book within stipulated time.
- 3 The learned counsel for the applicant submits that it remained on the part of their advocate to take appropriate steps for filing private paper book within stipulated time. He further submits that litigant should not be penalised if some mistakes occur on the part of

advocate to comply the directions given by the court. He further submits that in the interest of Justice, this Honourable court be pleased to allow the applicant to file private paper book and restore the First Appeal. He submits that the applicant has good chance of success in the present proceeding.

4 On the other hand, the learned counsel for the respondent original plaintiff vehemently opposed the present Civil Application. He filed affidavit in reply dated 2.2.2015. The learned counsel for the respondent submits that there is a delay of more than 5 years in preferring the Civil Application for restoration of First Appeal. He submits that the inordinate delay in filing the present Civil Application is not explained by the applicant in Civil Application. He submits that in the interest of justice, this Honourable Court be pleased to dismiss the present Civil Application as the applicant failed to disclose sufficient cause for restoration of First Appeal and condone the delay in preferring the present Civil Application.

5 I have heard both the sides at length. It is to be noted that in the present proceeding, this court by order dated 30.11.2007 at the time of passing order of admission directed the applicant to file private paper book within one year failing

which First Appeal shall stand dismissed for want of prosecution. It is the duty of advocate or their office to prepare paper book. If the advocate failed to comply the conditional order passed by this court the litigant should not suffer. In any case the learned counsel for the applicant made a statement that their private paper book is ready. He undertakes to file the same within one week from today.

6 Considering the above mentioned facts, I am of the opinion that applicant has made out a case for allowing Civil Application. Hence, following order:

(A) Civil Application is allowed in terms of prayer clauses (a), (b), (c) and (d) which reads thus:

“(a) That the delay in filing above Civil Application may kindly be condoned.

(b) That the conditional Order dated 30.11.2007 passed in the above First Appeal may be set aside and time to file paper book may kindly be suitably extended.

(c) Ad-interim Order passed on Civil Application No.3585/2007 may kindly be continued, since the Applicant has deposited entire decretal

amount in the Trial Court.

(d) The execution proceedings filed by the Respondent in execution of the aforesaid decree, may kindly be stayed on such terms as this Hon'ble Court may deem fit and proper.”

(B) Applicant to pay cost of Rs.3500/- to the respondent or their advocate within four weeks from today and place on record receipt to that effect, failing which Civil Application shall stand dismissed without referring back to the court.

(C) Civil Application is disposed of accordingly.

(K.K.TATED, J.)