

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CIVIL APPLICATION (CAO) NOS.1066 & 1067 OF 2015
IN/AND
MISC. CIVIL APPLICATION (RESTORATION) ST. NO. 9266 OF 2015
IN/AND
SECOND APPEAL NO. 198 OF 2004
(Hardayalsingh s/o Khushalsingh Sandhu Vs. Eknath s/o Wasudeo Saraf & others)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M. P. Khajanchi, Advocate for the appellant.
Shri Amol Mardikar, Advocate for the respondents.

CORAM : A. P. BHANGALE, J.
: 04 SEPT., 2015

CAO NO. 1066/15 :

Legal representatives of original appellant Hardayalsingh have moved this application for condonation of delay in filing application for restoration of the second appeal on the ground that it was listed for final hearing when original appellant Hardayalsingh was on death bed and could not contact his Counsel. In the result, it appears that Counsel has sought permission for his discharge from the case for want of instructions and accordingly he was discharged from the case. According to learned Advocate Shri Khajanchi, who is appearing on behalf of legal representatives, fairly conceded that he sought discharge from the case pursuant to which, order was passed by this Court on 22/7/2014 discharging him from the case and also for dismissal of the second appeal for want of

prosecution. It appears that original appellant died on 26/7/2014 after his Advocate has obtained discharge from the case as the appeal must have been called for final hearing, in the result, therefore, it was dismissed for want of prosecution.

After the death of Hardayalsingh (original appellant), the legal representatives of the deceased appellant approached the same Advocate and filed this application for condonation of delay of 258 days after they got notice in the execution proceedings addressed to Hardayalsingh (original appellant). Considering the facts and circumstances, although this application is strongly objected, it cannot be ignored that second appeal was already admitted upon substantial questions of law and it was listed for final hearing when for absence of appellant, it was dismissed for want of prosecution as the original appellant himself was on death bed on 22/7/2014 and ultimately died on 26/7/2014. The circumstances were beyond control of the Advocate concerned, who had to seek discharge from the case for want of instructions from the original appellant. Therefore, I am inclined to condone delay in this application though objected, subject to costs of Rs.500/-, payable to the High Court Legal Services Sub Committee, Nagpur. The application is allowed accordingly.

CAO NO. 1067/15 :

This is an application for bringing on record legal representatives of the deceased appellant Hardayalsingh. Since the delay is condoned today in respect of application filed by the legal representatives, the application is allowed. Legal representatives of deceased appellant Hardayalsingh Sandhu be brought on record.

MCA ST. 9266/15 :

This is an application for restoration of the Second Appeal. This Court has already permitted the legal representatives of deceased appellant to be brought on record in place of deceased appellant Hardayalsingh, considering larger interest of justice, the application is allowed. Second appeal is restored to file.

Second appeal be listed for final hearing since record & proceedings are received.

JUDGE