

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

CIVIL APPLICATION (CAO) NO. 44 OF 2015
IN
MISC. CIVIL APPLICATION ST.NO. 24673 OF 2014
IN
SECOND APPEAL ST. NO. 3173 OF 2011

Haridasji Raghoji Nitnaware Vs. Laxmibai Manikraoji Bagade

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

Court's or Judge's Order

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Shri R. P. Ghanwat Adv for applicant.
Shri V. Dharkar Adv for respondent.

CORAM: A. S. CHANDURKAR J.

DATED: FEBRUARY 17, 2015.

Prayer is to condone delay of 1327 days in filing restoration application. In the application it is stated that the second appeal challenging the decree passed by the first appellate Court was filed on 24.01.2011. However, the applicant's counsel did not remove the office objections within the stipulated period and hence registration of the second appeal came to be refused. It is further stated that in the intervening period the applicant was not keeping well and on 24.11.2014 he approached another counsel and after making inquiries it was revealed that second appeal was already dismissed. It is stated that the earlier counsel remained absent and fact of dismissal was not informed to the applicant. Reliance is placed on decision of the Supreme Court in *Rafiq and another Vs. Munshilal and another* AIR 1981 Supreme Court 1400.

The application is opposed on behalf of the non applicant by

submitting that applicant was not diligent in prosecuting the second appeal. It is submitted that in the execution proceedings filed by the non applicant, the present applicant had appeared on 29.02.2012 and had prayed that execution proceedings be suspended as the second appeal was pending. It is further submitted that there after no steps appear to have been taken by the applicant and hence the aforesaid delay does not deserve to be condoned.

It is to be noted that the office record shows that initially on 06.04.2011 the objections were notified for being removed. On 07.04.2011 it is stated that none was present on behalf of the applicant and as office objections were not removed the registration stood refused. According to applicant the fact of dismissal was not informed by the learned counsel who was then representing him. Though it is true that in the execution proceedings the applicant had appeared, even on 29.02.2012 he was under the belief that the second appeal was pending. The record therefore shows that the appeal has been dismissed for non removal of office objections and absence of his counsel.

In the application it is stated that the applicant was suffering from certain ailments resulting in delay. Considering the law as laid down in *Rafiq* (supra) as the registration has been refused on account of non removal of office objections and absence of applicant's counsel, one opportunity to contest the proceedings on merits is required to be given to the applicant. However, for the delay as caused the non applicant is required to be compensated by paying costs.

In view of aforesaid the following order is passed:

Delay in filing restoration application is condoned subject to costs of Rs. 2000/- to be paid by applicant to the non applicant within three weeks from today. Civil Application is allowed in aforesaid terms and disposed of.

Misc. Civil Application St. No. 24763 of 2014: For reasons stated in the application the order refusing registration is revoked. The objections if any be removed within a period of 4 weeks from today. Misc. civil application is allowed and disposed of. No costs.

JUDGE

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