

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

919 CIVIL APPLICATION NO. 12167 OF 2016
IN FA/20/1999

RAMSWAROOP LAXMANDAS BHATIA AND ANOTHER
VERSUS
JAYANT TRIBHOVANDAS MANUBARWALA AND ANR.

--

CIVIL APPLICATION NO. 12161 OF 2016
IN FA/18/1999

RAMSWAROOP LAXMANDAS BHATIA AND ANOTHER
VERSUS
MAMTA PARIKSHIT RAJA AND ANR.

===

Mr. MM Ambhore, Adv. For applicants/appellant;
Mr. Mahesh Patil, Adv. For Resp; Nos. 1 & 2.

CORAM : P.R.BORA, J.

DATE : 5th October, 2016.

PER COURT :

1) Heard. The present applications are filed seeking restoration of the First Appeals, which have been dismissed in default vide order passed by this Court (Coram: M.T.Joshi, J.) on 15th January, 2015. There is delay of 562 days in filing the present applications.

2) Shri Ambhore, learned Counsel appearing for the applicant has undertaken to remove all office objections within two weeks. The learned Counsel submitted that because of some lapses on part of the counsel appearing for the appellant – insurance company in attending the matters, the first appeals came to be dismissed in default.

. The learned Counsel further submitted that the fact of dismissal of the appeals came to the knowledge of the appellant – insurance company after lapse of long time and immediately thereafter steps were taken and the present applications came to be filed. The learned Counsel has prayed for condoning the delay and has also prayed for setting aside the order passed on 15.1.2015 and consequently to restore the appeals to their original files.

3) Shri Mahesh Patil, learned Counsel for the original claimants has strongly opposed for condoning the delay as well as restoration of the appeals. The learned Counsel submitted that the

First Appeals are of the year 1999. The learned Counsel submitted that the order passed by this Court on 15th January, 2015 reflects that though from time to time, the matters were adjourned at the instance of the appellant, they were not conducted and not even properly attended by the appellant. The learned Counsel further submitted that even the reasons so assigned for occurrence of the delay are not justifiable and the delay cannot be condoned on such flimsy grounds. The learned Counsel, in the alternative, has prayed for saddling heavy costs in the event this Court is inclined to allow the applications.

4) After having considered the submissions made by the parties, it appears to me that ultimately the matters are to be decided on merits. It is true that the negligence is writ-large on the part of the appellant. However, that can be compensated by awarding adequate costs to the original claimants, but the matters need to be heard and decided on merits. In the

circumstances, I am inclined to allow the present applications. Hence, the following order, -

ORDER

i) The delay caused in filing the present applications is condoned.

ii) The order passed by this Court on 15th January, 2015 is quashed and set aside and the appeals are restored to their original file subject to payment of costs of Rs.10,000/- in each of the matters within four weeks, to be paid to the claimants.

iii) It is clarified that deposit of the cost as aforesaid is condition precedent.

iv) Both the civil applications are disposed of.

5) The appeals shall be placed for final hearing after six weeks. In any case the matters will be heard on the adjourned date and no further adjournment will be granted.

(P.R.BORA)
JUDGE

bdv/