

IN THE HIGH COURT OF JUDICATURE AT BOMBAY***CIVIL APPELLATE JURISDICTION*****CIVIL APPLICATION NO.973 OF 2015****IN****SECOND APPEAL NO. 644 OF 2006****Ramchandra s/o. Anna Pise,
deceased through his legal heir****..... Applicant****VERSUS****Smt.Rukmini Sadu Pise
Deceased through legal representatives & Ors. Respondents**

Mr.S.P.Munghate for the Applicant.

Mr.Tejpall Ingle for Respondent Nos. 1A to 1C.

CORAM : R.D. DHANUKA, J.**DATED : 3rd FEBRUARY, 2016****P.C.**

By this civil application, the applicant seeks condonation of delay of 3 years and 134 days in filing civil application and seeks restoration of the second appeal which is dismissed in view of the non-compliance of the conditional order passed by this court on 22nd November, 2011.

2. Learned counsel appearing for the applicant invited my attention to some of the reasons recorded in the civil application in support of his submission that the delay has been satisfactorily explained. He submits that the applicant did not notice that the second appeal had appeared on board in the year 2011 when the conditional order came to be passed. He submits that the private paper book as directed by this court was to be filed within four weeks from today and copy thereof was to be served upon the respondents' advocate simultaneously. He

submits that only on the ground that the private paper book was not filed within the time prescribed, the appeal has been dismissed. The respondents have already taken out execution proceedings against the applicant. He submits that the applicant has good chances of succeeding in the matter on merits and thus an opportunity be rendered to the applicant to file private paper book and to proceed with the second appeal on merits. He submits that the interim order which was in force in favour of the applicant also be restored.

3. Learned counsel appearing for the applicant submits that this court may award a reasonable amount of cost in favour of the respondents.

4. Mr.Ingale, learned counsel appearing for the respondents invited my attention to the reply filed by the respondents and would submit that the applicant has not satisfactorily explained the substantial delay in filing the civil application and has not given any satisfactorily reasons for setting aside the order of this court dismissing the second appeal for non-compliance with the conditional order. He submits that his clients are senior citizens.

5. A perusal of the civil application indicates that the applicant has rendered some reasons for seeking condonation of delay. There is no dispute that the second appeal has been rejected merely on the ground that the applicant has not filed private paper book within the time prescribed. This court has already admitted the second appeal and has formulated substantial question of law. This court has also granted interim relief in favour of the applicant.

6. In my view though the reasons recorded by the applicant in this second appeal are not fully satisfactory, interest of justice would be met with if the

applicant is directed to pay the cost of Rs.15,000/- to the respondents within two weeks from today, failing which the order passed today to stand vacated without further reference to court. It is made clear that the cost of Rs.15,000/- shall be paid by way of demand draft in the name of respondent no. i.e. Sau.Chandrabhaga Chandrakant Koparde on behalf of respondent no.1 and other respondents.

7. I, therefore, pass the following order :-

(a) Civil application is made absolute in terms of prayer clauses (a), (b) and (c).

(b) Four weeks time is granted to file private paper book. If private paper book is not filed within four weeks from today, the conditional order passed by this court on 22nd November, 2011 to stand restored without further reference to court. It is made clear that no further extension would be granted.

(c) Cost of Rs.15,000/- shall be paid in the name of Sau.Chandrabhaga Chandrakant Koparde within two weeks from today. The said demand draft should be served upon the learned advocate representing the respondents.

(d) It is also made clear that the interim order which was in force till the dismissal of the second appeal also stands restored.

(e) The Execution Application No. 294 of 2002 filed by the respondents is stayed subject to the compliance of the

aforesaid condition.

(f) The applicant shall not create any third party rights in respect of the suit property during the pendency of the proceedings.

8. Civil application is disposed of in the aforesaid terms. No order as to costs.
9. Parties as well as the executing court to act on the authenticated copy of this order.

[R.D. DHANUKA, J.]