

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 1947 OF 2015
IN
FIRST APPEAL NO. 643 OF 2011
IN
S.C. SUIT NO. 3586 OF 2007

Mr. Suresh K. Jain
V/s.
Smt. Madhavi S. Lad

.....Applicant

.....Respondent

* * * * *

Mr. Hemant Deshpande i/by Mr. Satyam R. Dubey, Advocate for the applicant.

Coram :- Smt. R.P. SondurBaldota, J.

18th March, 2016.

P.C. :-

1). This Civil Application is for restoration of the First Appeal after condonation of delay of 2 years 329 days. The Civil Application has been served upon the respondents who are absent despite service.

2). The appeal herein was admitted on 20th April, 2011 and the appellant was directed to file private paper-book within a period of one year from the date of the admission. Non-filing of the paper-book within the time granted, entailed dismissal of the appeal. As the direction as regards the private paper-book was not complied with, the First Appeal stood dismissed pursuant to the self-operative order. In the Civil Application, the applicant claims that, after the Appeal was admitted, he was informed by his advocate that now his presence was not required in the Court and that the First Appeal would come up for final hearing after about 6 to 7 years and the appellant need not attend even the office of

the learned Advocate. The appellant relied upon the assurance of the advocate. Later, the appellant required the documents tendered by him in evidence in the suit, out of which the First Appeal arose for the purpose of production in trial in L.C. Suit No. 6770 of 2009. Therefore, he made enquiries in the first week of March, 2015 about the original documents filed in the suit, of which the records and proceedings had been transferred to this Court. While making those enquiries, he learnt that the First Appeal stood dismissed automatically for non-compliance of the direction for filing paper-book. He has thereafter taken out the present Civil Application.

3). The reasons stated in the application, appear to be genuine reasons. After the appeal was admitted was 20th April, 2011 there was no need for the appellant to attend the Court. Filing of the paper-book in the Court was infact part of the work of the Advocate appearing for the appellant. In the circumstances, in my opinion, there is sufficient cause made out for condonation of delay and restoration of the appeal. Hence, the Civil Application is allowed in terms of prayer clauses (a) and (b). As regards prayer clause (c) of the Civil Application, which is for continuation of the interim relief operating in the first appeal, the applicant is at liberty to file a separate application for the relief claimed therein. The applicant shall file paper-book within a period of 4 weeks from today.

(SMT. R.P. SONDURBALDOTA, J)