

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.1214 OF 2015
IN
SECOND APPEAL (STAMP) NO.11641 OF 2013**

Rajaram Kallappa Pawar & Anr. .. Applicants
Vs.
Smt.Shalan Shivaji Chougule & Ors. .. Respondents

Mr.S.M.Shettigar for applicants.
Mr.Kalpesh U.Patil for respondent nos.1 and 2(a) to 2(f).

CORAM : R.D. DHANUKA, J.
DATE : 23rd September 2016

P.C.

. By this civil application, the applicants seek condonation of delay of 1 year and 363 days in filing the civil application and seek recall of the order dated 28th July 2013 passed by the learned Additional Registrar (Judicial-I) and seek restoration of the second appeal and the civil application.

2. Civil application is opposed by the learned counsel for the respondent nos.1 and 2(a) to 2(f) on the ground that the civil application has not been affirmed by any of the applicants. It is affirmed by Mr.Pravin H. Pawar who is son of one of the applicants who is neither party to the suit before the trial Court nor a party in the present second appeal. Civil application is also opposed on the ground that the applicants have not explained the delay properly.

3. Learned counsel appearing for the applicants invited my attention to the averments made in the civil application and also the

additional affidavit filed by the applicant no.2. He submits that the delay has been properly explained in the civil application. In support of this submission, he invited my attention to paragraphs 7 to 9 of the civil application and some of the paragraphs of the additional affidavit. In so far as the objection of the respondents that the civil application was not affirmed by any of the applicants is concerned, learned counsel placed reliance on the affidavit filed by the applicant no.2 and would submit that he is Agriculturist and was not familiar with the procedure as to whether the civil application was to be affirmed by the parties or not and hence his son has affirmed the affidavit on behalf of the applicant no.2. In the additional affidavit filed by the applicants, the applicants have adopted the averments made in the civil application.

4. In so far as the first submission of the learned counsel for the respondent nos.1 and 2(a) to 2(f) that the civil application was not affirmed by the parties to the civil application but was affirmed by son of the applicant no.2 is concerned, it is not in dispute that both the applicants are Agriculturists and the civil application was affirmed by son of the applicant no.2. The applicant no.2 being an illiterate person, asked his son to verify the civil application on behalf of him. No sooner the objection of the applicant no.2 was raised in the affidavit-in-reply, the applicants have clarified this issue and has re-iterated and confirmed the filing of civil application by them and confirming the contents thereof in the said additional affidavit. I am thus not inclined to accept this hyper technical objection raised by the learned counsel for the respondent nos.1 and 2(a) to 2(f).

5. In so far as the delay in filing the civil application is concerned, I have perused the civil application and have heard the learned counsel for both the parties. In my view, the applicants have explained the delay in paragraphs 7 to 9 in the civil application sufficiently.

6. For the reasons recorded in the civil application, delay in filing the civil application is condoned. The applicants have made out a case for recall of the order dated 28th July 2013 passed by the learned Additional Registrar (Judicial-I) and seek restoration of the second appeal and the civil application.

7. I therefore pass the following order :-

- (i) Civil application is made absolute in terms of prayer clauses (a) and (b);
- (ii) Second Appeal (St.) No.11641 of 2013 and Civil Application (St.) No.11650 of 2013 are restored to file on the condition that the applicants remove all office objections within two weeks from today;
- (iii) It is made clear that if the office objections are not removed within two weeks from today, second appeal to stand dismissed without further reference to the Court;
- (iv) There shall be no order as to costs.

R.D. DHANUKA, J.