

Sequeira

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

**SECOND APPEAL NO. 427 OF 2008
Along with
CIVIL APPLICATION NO. 309 OF 2014
Along with
CIVIL APPLICATION NO. 622 OF 2015**

Smt.Parvati Shankar Lugade .. Appellant

Versus.

Smt.Hirabai Dnyanu Shelar
Since deceased through legal heirs
1a Ananda Dnyanu Shelar & ors.

.. Respondents

Mr.Rahul Vijaymane i/b Satyajeet Rajeshirke, for Applicant in
C.A.S No.622 of 2015.

None for Appellant/Applicant in S.A. No 427 of 2008 and C.A.
No.309 of 2014.

Mr.Bhushan Walimbe, for Respondent No.1-A to 1-C.

**CORAM: N.M. JAMDAR, J.
Wednesday, 23 March 2016.**

PC. :

The Civil Application No.309 of 2014 is taken out for restoration of Second Appeal which was dismissed for non-prosecution on 24 September 2008.

2. The Application is taken out after the delay of five years and 87 days. In the application, the only reason that is given is that Advocate was not present on that date due to some personal difficulty. Thereafter why it took five years to file application for

restoration is not mentioned. By order dated 8 January 2016 by way of indulgence this court placed the Appeal on board along with the Civil Application to ascertain the merits of the Appeal. When the matter is called out request is made on behalf of Advocate for the Applicant. The advocate on record and the advocate who argued the matter on earlier date is also not present. Therefore the Appellant is not ready to argue the Appeal even today.

3. The suit was filed for partition and separate possession of the property. The trial Court decreed the suit and granted respective shares for the parties. The Appeal filed by the Appellant has been dismissed. Even though the decree of partition is of the year 1989, the same has not been proceeded with due to the pendency of this Appeal. The conduct of the Appellant-Applicant is of complete negligence, causing harassment to the other family members who are waiting for the fruits of the decree for last 27 years. In the circumstances, the Civil Application cannot be entertained. Civil Application is accordingly rejected.

(*N.M. JAMDAR, J.*)