

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application (CAO) No.155 of 2016

In

Misc. Civil Application Stamp No.19197 of 2015

In

First Appeal No.634 of 2002

(The Director, Central Warehousing Corporation and another v. Smt.
Durgabai wd/o Chaturbhuj Agrawal and others)

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders
and Registrar's order

Shri N.C. Phadnis, Advocate for Applicants.

Shri Pramod Agrawal, Advocate for Respondent Nos.1, 2 and
3(A),(B),(C),(D).

Coram : R.K. Deshpande, J.

Date : 3rd May, 2016

Civil Application (CAO) No.155 of 2016 :

This application seeks condonation of 2,107 days of delay caused in filing Misc. Civil Application Stamp No.19179 of 2015 for restoration of First Appeal No.634 of 2002. Misc. Civil Application Stamp No.19179 of 2015 has been filed for setting aside the order of dismissal of appeal passed on 16-11-2016 and for restoration of First Appeal No.634 of 2002.

The matter was dismissed in default by this Court on 24-11-2009. Perusal of the said order on page 39 of this

application (i.e. Document No.11) indicates that the applicants had not complied with the order dated 9-4-2009 passed by this Court, restoring the first appeal subject to payment of costs of Rs.2,000/-. There is no dispute that when the order dated 24-11-2009 was passed by this Court, none was present for the applicants. The applicants came to know of this order when they received the notice from the Trial Court of the application for issuance of warrant of attachment of the property filed on 16-6-2015, and after inspecting the record on 29-9-2015, the applications for condonation of delay and restoration of first appeal were filed on 1-10-2015. This factual aspect is not in dispute.

It is not the case of lack of *bona fides* on the part of the applicants. The applicants were not present when the order was passed by this Court dismissing the matter in default on 24-11-2009. In view of this, the knowledge of passing of the order on 24-11-2009 cannot be attributed to the applicants. The explanation is furnished by the applicants that for the first time they received the notice from the Trial Court of the application dated 16-6-2015, filed for issuance of warrant of attachment of the property and thereafter the application for condonation of delay was filed on the basis of the inspection done on 29-9-2015. Hence, the delay caused is sufficiently explained and this Court is satisfied that the case is made out to condone the delay.

Hence, Civil Application (CAO) No.155 of 2016 is allowed. The delay caused is condoned.

The civil application is disposed of.

Misc. Civil Application Stamp No.19197 of 2015 :

This Misc. Civil Application is taken up for hearing by consent of the learned counsels appearing for the parties.

The application seeks recall of the order dated 16-11-2015 passed by this Court dismissing the matter in default. This Court had granted eight weeks' time to the applicants/appellants to file a private paper-book on 21-9-2006, which was a conditional order, and failing to comply with the order shall result in consequence of dismissal of order without reference to the Court. The period of eight weeks expired on 16-11-2006. The private paper-book was filed on 10-11-2006. However, the pursis filed to place the private paper-book on record contains "First Appeal No.664 of 2002" instead of "First Appeal No.634 of 2002. The office, therefore, dismissed the matter for non-compliance of the order dated 21-9-2006.

The undisputed factual position is that the

paper-book was filed prior to the period of eight weeks expired as per the order dated 21-9-2006, and hence the mistake of putting the wrong number of the first appeal should not result in consequence of dismissal of appeal.

Hence, the Misc. Civil Application Stamp No.19179 of 2015 is allowed. The order dated 16-11-2016 dismissing the appeal is set aside. The paper-book was filed within time, and hence First Appeal No.634 of 2002 is restored along with all interim orders operating therein.

Misc. Civil Application is disposed of.

Judge.

Lanjewar