

(1)

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**CIVIL APPLICATION NO.10323 OF 2017
WITH
CIVIL APPLICATION NO.10322 OF 2017
IN
CIVIL APPLICATION NO.9318 OF 2016
IN
R.C. NO.264 OF 2009
IN
SECOND APPEAL (ST.) NO.20114 OF 2005**

Ganesh Kashinath Mhaske ..APPLICANT

VERSUS

Appa Kashinath Mhaske & ors. ..RESPONDENTS

Mr P.V. Langhe, Advocate for applicant;
Mr N.V. Mande, Advocate for respondents no.4-A to 4-D

CORAM : NITIN W. SAMBRE, J.

DATE : 20th November, 2017

ORAL ORDER:

Against concurrent findings, the applicant-appellant (original plaintiff) preferred Second Appeal, which came to be dismissed for non-payment of Bhatta, of which restoration is sought by Civil Application No.9318 of 2016. There is delay of 2898 days in preferring an application for restoration.

2. Civil Application No.10322 of 2017 is moved for condonation of delay and bringing legal representatives of respondent no.1 on record.

(2)

3. Civil Application No.10323 of 2017 is moved for condonation of delay and bringing legal representatives of respondent no.4 on record.

4. All these prayers viz. for condonation of delay in moving an application for restoration of Second Appeal, condonation of delay and bringing legal representatives of respondents no.1 and 4 on record, are strenuously opposed by the learned Counsel appearing on behalf of respondents, on the ground that no sufficient grounds are given in support of the said cause. He would urge that if the applications are allowed, costs of Rs.25,000/- be saddled on the appellant.

5. Considered submissions.

6. The fact remains that in view of change in the Rules, now if the notices are ordered, Bhatta is not required to be paid. The fact remains that payment of Bhatta is a compliance to be reported by the lawyer and it is for the default of the lawyer, appeal came to be dismissed by virtue of conditional order passed by this Court on 9th June, 2008.

7. The Apex Court, in the matter of **Rafiq & anr. vs. Munshilal & anr.**, reported in **1981 SCR (3) 509** has already a view that for default of the advocate, a litigant may not be made to suffer.

8. In the aforesaid background, in my opinion, all three civil applications need to be allowed. As such, I pass following order :-

(3)

Civil Application No.9318 of 2016 for restoration of Second appeal by condoning delay stands in terms of prayer clauses (A), (B) and (C).

Appellant shall file private paper-book within a period of twelve weeks from today, failing which the order condoning delay and restoring Second appeal shall stand recalled without further reference to the Court.

Civil Application Nos.10322 of 2017 and 10323 of 2017 for condonation of delay and bringing legal representatives of respondent nos. 1 and 4, respectively on record, stand allowed by ordering condonation of delay. Legal representatives of said respondents be brought on record within a period of four weeks from today.

The order of condonation of delay is subject to payment of costs of Rs.10,000/-, to be deposited by the appellant in this Court within four weeks from today, to which the legal representatives of respondents no.1 and 4 will be entitled.

If costs as aforesaid is not deposited, the civil applications be deemed to have been dismissed without further reference to the Court.

(NITIN W. SAMBRE, J.)

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