

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

**CIVIL APPLICATION NO.1269 OF 2016
IN
SECOND APPEAL NO.245 OF 2006**

Hajisaheb Babalal @ Khadir

Jamadar & ors.

... Applicants / Appellants

V/s.

Ajij Nabisaheb Sayyad & ors.

... Respondents

...

Mr. P. D. Pise for the applicant.

Mr. P. D. Dalvi for respondent nos. 1 to 4, 6 to 8.

...

CORAM : S. C. GUPTE, J.

DATE : 3 FEBRUARY, 2017.

P.C. :

. Heard the learned counsel for the parties.

2. This Civil Application seeks recall of a dismissal order passed by this court on 22 March 2010. The application is taken out more than six years after the dismissal. The reasons for the delay in taking out the present application are stated in paragraph 3, 4, & 5 of the Civil Application. It is submitted that on the date when the matter was called out, the applicant's advocate was not feeling well and therefore, was not present in the Court. It is submitted that the advocate, however, had instructed his colleague to appear in the matter and request for an adjournment. It is submitted that the colleague also unfortunately could not appear in the matter and as a result, the matter was dismissed. It is submitted that though the matter was dismissed, upon enquiry by the advocate his colleague informed him

that the matter was adjourned and would come up in due course, and that the advocate concerned was, thus, under an impression that the appeal was pending admission and would come up in due course. This excuse is too strange, to say the least. A stranger excuse follows in paragraph 4. It is submitted that the main person looking after the matter from the Appellants' side, one Balasaheb, being a paralytic patient, was unstable and unable to inform the other appellants regarding the pending litigation. It is submitted that the other appellants were trying to defend various other litigations by engaging other advocates but were not properly guided about the present litigation. The applicants have relied on medical reports of Balasaheb including his paralysis diagnosis. These reports are of the year 2012, that is to say, nearly two years after the dismissal of the appeal. What follows next is even a stranger story. It is submitted that the respondents took out further proceedings in the lower Court taking advantage of the dismissal of the present appeal. These proceedings were defended by the other applicants and yet the other applicants were not aware of the remedy of the present appeal and were under an impression that the appeal was finally disposed of. It is submitted that, accordingly, the other applicants did not bother about the present litigation. The health of Balasaheb slowly got better, but he still did not remember the name of the advocate in Mumbai to whom the present appeal was entrusted. It is submitted that with the blessing of God, sometime in end of December, 2015, Balasaheb suddenly remembered the name of the advocate. Thereafter, the applicants tried to search out the advocate and ultimately succeeded in finding him in January, 2016.

3. Nothing needs to be said besides recounting these narrations. None of the reasons set out in the Civil Application counts as a reasonable excuse preventing the applicants from approaching this court earlier.
4. Accordingly, the Civil Application is dismissed. No order as to costs.

(S. C. GUPTE, J.)