

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 1143 OF 2017
IN
WRIT PETITION NO. 4456 OF 1991

Union of India & Anr.	..	Applicants
<u>In the matter between :</u>		
Union of India & Anr.	..	Petitioners
vs.		
Jamshedji N. Anklesaria (since deceased by L.Rs.)		
Miss Yasmin J. Anklesaria & Ors.	..	Respondents

Mr. S. R. Rajguru with D. P. Singh for Applicants.
Mr. Mayur Khandeparkar with Mr. Lalan Gupta i/b. M/s. Dhruve
Liladhar & Co. for Respondent No. 1(a).

CORAM : M. S. SONAK, J.
DATE: 28 AUGUST 2017

P.C :

- 1] Heard Mr. S. R. Rajguru for the applicants.
- 2] This is an application seeking condonation of delay of 4018 days i.e. approximately 11 years in seeking recall of the order dated 6th July 2005 by which this petition came to be dismissed for non prosecution.
- 3] In paragraph 38 of the civil application, there is a statement that the copy of the order dated 6th July 2005 dismissing the petition for default was not received in the office of the applicants till 2013. Thereafter, there is some explanation, which is, again, far from

satisfactory, as to why the application for restoration was not filed immediately in the year 2013 but filed only on 29th June 2016.

4] In paragraph 41, the following averments has been made:

“41. I say that then Advocate's Clerk who has already retired did not inform the Advocate was supposed to appear as through oversight did not notice that matter was listed on Board as the Application for restoration not made immediately or within time as neither the Petitioners nor the Advocate could be informed when the matter as listed on Board.”

5] Mr. Rajguru attempted to make submissions on merits and pointed out that the Union of India has a very good case to succeed on merits. He submits that the decision of the Hon'ble Supreme Court in the case of ***Union of India & Ors. vs. Robert Zomawia Street¹***, supports the contention of the applicants on merits.

6] In this case, delay is inordinate. The delay is almost 11 years. There is no sufficient cause indicated in the civil application. Mere statement that copy of the order dismissing this petition for default was received in the office of the applicants some time in the year 2013, is hardly any explanation. Similarly, the explanation in paragraph 41, which mainly relates to the period between 2013 and 2016 is again, hardly any explanation which could be construed as a sufficient cause to explain such an inordinate delay of 11 years.

1 (2014) 6 SCC 707

Even otherwise the order dated 6th July 2005 records that the matter was called out on two occasions and was fixed on 6th July 2005 by way of last chance. At this stage, there is no question of going into the merits of the matter.

7] Since no sufficient cause has been shown, the application seeking condonation of delay of almost 11 years is hereby dismissed. Consequently, the application seeking restoration also stands dismissed.

(M. S. SONAK, J.)

Chandka