

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

**CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.215 OF 2015
IN**

**REVIEW PETITION (ST.) NO. 15667 OF 2015
IN**

SECOND APPEAL NO. 658 OF 2007

Shri. Dundya Hari Mate Applicants
(since deceased) thru' his Legal
Heirs Shri. Ramdas Dundya Mate
& Ors.

Vs.

Chindhu Ganpat Mate Respondents
(since deceased) thru' his Legal
Heirs, Shri. Dattatraya Chindhu
Mate & Ors.

Mr. Tejas Dande a/w Mr. Bharat Gadhavi i/by Tejas Dande &
Associates for the Applicants.

Ms. Teja Katdare a/w Ms. Alpa Javheri, for Respondents no. 1,
3, 4 and 5.

Coram : Smt. R.P. SondurBaldota, J.

Date : 8th March, 2017

P.C.

1 Leave to amend is granted. Amendments to be
carried out forthwith.

2 This Civil Application is taken out for condonation of delay of 157 days in filing the Review Petition. Heard the advocates. Perused the application. For the reasons stated therein, the application is allowed. By consent, the Review Petition is taken up for hearing forthwith.

(Smt. R.P. SondurBaldota, J.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION
REVIEW PETITION (ST.) NO. 15667 OF 2015****IN****SECOND APPEAL NO. 658 OF 2007**

Shri. Dundya Hari Mate Petitioners
(since deceased) thru' his Legal
Heirs Shri. Ramdas Dundya Mate
& Ors.

Vs.

Chindhu Ganpat Mate Respondents
(since deceased) thru' his Legal
Heirs, Shri. Dattatraya Chindhu
Mate & Ors.

Mr. Tejas Dande a/w Mr. Bharat Gadhavi i/by Tejas Dande &
Associates for the Petitioners.

Ms. Teja Katdare a/w Ms. Alpa Javheri, for Respondents no. 1,
3, 4 and 5.

Coram : Smt. R.P. SondurBaldota, J.

Date : 8th March, 2017

P.C.

1 The appellant files this petition for review of the order dtd. 23rd February, 2015, by which the appellants' application for restoration of the Second Appeal was dismissed.

2 The Second Appeal preferred by the review petitioner was dismissed as a consequence to the order dtd. 18th

November, 2008 passed in view of the death of respondent no.2(a). By that order, the review petitioner was granted four weeks time to take necessary steps to bring the heirs of respondent 2(a) on record and it was directed that on failure to take the steps, the matter shall stand dismissed without further reference to the court. Since the order was a self-operative order, the office recoded it's dismissal on expiry of the period of four weeks from 18th November, 2008. The review petitioner claimed to have learnt about the order of the dismissal of the Second Appeal as late as 13th March, 2012 but took out the application for restoration about an year thereafter i.e. 5th March, 2013. The order under review records that the review petitioner was therefore required to explain delay for two periods i.e. from 13th March, 2012 to 15th March, 2013 and 18th November, 2008 till filing of the application. Since there was no explanation provided for the delay, the Civil Application was dismissed.

3 Mr. Dande, the learned advocate appearing for the review petitioner states that in fact there was no need for the review petitioner to file an application to bring the heirs of respondent no.2(a) on record, because on the death of respondent no.2 to the Second Appeal, his heirs i.e. his widow and daughter were brought on record as respondent no.2(a) and respondent no.2(b). Thereafter when respondent no.2(a) expired, her heir i.e. respondent no. 2(b) was already on record.

All that the review petitioner was required to do was to bring this fact to the notice of the court and also on record by describing respondent no. 2(b) as the heir of respondent no.2(a) also. Instead the review petitioner, as stated in the application for restoration proposed to file an application to bring the heir of respondent no.2(a) on record.

4 It is obvious that the whole confusion was created only because the appellant/ review petitioner was not diligent enough in attending to the matter. When the order dtd. 18th November, 2008 was passed, none was present on his behalf to point to the Court that there was no need to take any steps to bring the heirs of respondent no. 2(a) on record. Because nobody was present to bring this fact to the notice of the court, the directions as contained in that order came to be given, which led to dismissal of the Second Appeal subsequently.

5 In all the above circumstances, the order dtd. 23rd February, 2015 is required to be reviewed on account of an error apparent on the record. Hence, the Review Petition is allowed. The order dtd. 23rd February, 2015 is recalled and the Civil Application No. 409 of 2013 is allowed. Office to place the Second Appeal on board for admission on due date.

(Smt. R.P. SondurBaldota, J.)