

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****CIVIL APPLICATION NO.1138 OF 2010****IN****SECOND APPEAL NO.595 OF 1998**

Shri Madappa Bhimappa Sinewadiar

...Applicant

vs.

Somling Bhutali Kanapawadiar & Ors.

...Respondents

....

Ms. Preeti B. Walimbe, a/w. Ms. Vrushali Penkar, for the Applicant.

Mr. Swaroop Karade, i/b. S.S. Shah, for Respondent No.1.

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CORAM : S.C. GUPTE, J.**DATED : 22 FEBRUARY 2017****P.C. :**

. The Civil Application seeks recall of a conditional dismissal order dated 15 March 2002 passed in the Second Appeal and restoration of the Second Appeal along with the Civil Applications. There is a long delay in preferring the present Civil Application. The delay is explained by submitting that the Applicant is a senior citizen, suffering from corneal blindness of both eyes for a very long time and surviving on the mercy of his relatives. It is submitted that the appeal was admitted in the year 1998 and the Applicant was informed by his Advocates that it would take 9 to 10 years to come up for final hearing. It is submitted that when the Advocate informed him the status of the Second Appeal, for the first time he learnt that the matter was dismissed for default. At that time, the order was not uploaded on the server. The conditional

dismissal order in the present case was one of the group matters, where similar conditional orders were passed. The Applicant's Advocate was said to be unaware that the common conditional order included the present Second Appeal. The Applicant, in the premises, prays for recall of the conditional dismissal order and restoration of the Second Appeal.

2. For the reasons stated in the Civil Application, the delay is condoned and the conditional order of dismissal dated 15 March 2002 is recalled and set aside and the Second Appeal and the Civil Applications taken out therein are restored. The Second Appeal shall now appear on the final hearing board of the week commencing from 20 March 2017. A notice of this order may be duly served by the Applicant's Advocate on the Respondents' Advocates.

(S.C. GUPTE, J.)