

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CIVIL APPLICATION NO. 1540/2017 IN MISC. CIVIL APPLICATION ST.
NO.7766/2017 IN REJECTED S.A.NO.310/2017 (SA (R) St.No.26197/2016)

Madhukar s/o Kashiram Deogirkar and ors. .vs.. Dilip Vithobaji Waghmare

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's Orders.

Court's or Judge's orders.

Mr. P. S. Tiwari, Advocate for appellant.

CORAM : V.M. DESHPANDE, J.

DATED : NOVEMBER 9, 2017

This is an application for condonation of delay in filing application for restoration of rejected second appeal.

Heard Mr. P. S. Tiwari, learned counsel for the applicants. The application is moved since there is a delay of 19 days in moving the application for restoration. The present applicants are the original defendants. They presented the second appeal before this Court. The second appeal was under objection and on 23.02.2016 it was listed on the board of Registrar (Judicial). Counsel for the appellant appeared and sought time to remove the office objection. The objection was as to whether the second appeal is delayed by two days or not. The explanation which was submitted by the counsel appearing before the Registrar (Judicial) was not accepted. Therefore, he was to file an application for condonation of delay. In the meanwhile, the learned counsel fell ill. Resultantly, the objection was not removed within the stipulated period and therefore in view of the order dated 23.02.2017, the registration of the second appeal was refused by the end of 09.03.2017.

The application is affirmed by the learned counsel Mr. Prakash Suresh Tiwari himself in which he has made a

statement on oath that he was unwell and therefore he could not remove the office objections.

There is no reason not to accept this statement on oath made by the Advocate. Therefore, the delay of 19 days in moving the application for restoration is hereby condoned.

In view of above, the application is allowed and disposed of accordingly.

Civil Application No.7766/2017

This is an application for restoration of rejected second appeal which was having Stamp No.26197/2016. Registration was refused by the registry since the applicant failed to remove the office objection within stipulated period. According to the registry, the second appeal was barred by limitation and the delay was of two days.

Since, the registration itself is refused, there was no need to issue notice to the non applicants. The reasons given in the application are duly supported by affidavit of Mr. Prakash Tiwari, Advocate. I do not see any reason not to accept the said statement made on oath by learned counsel.

In that view of the matter, the application is allowed. Second Appeal St. No.26197/2016 is restored to file subject to payment of costs of Rs.500/- to be paid to the High Court Legal Services Sub Committee, Nagpur within a period of one week from today and the receipt of the same should be filed on record.

The application stands disposed of accordingly.

JUDGE