

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

CIVIL APPLICATION NO.1537/2017 WITH
MISC. CIVIL APPLICATION (Rest). ST. NO.10471/2017
IN REJECTED S.A.NO.314/2017 (S.A.ST.NO.366/2017)

Shri Gorakshan Sanstha, Regd. Public Trust through its Secretary, Vijaykumar
 Shivashankar Jani, Akola ..vs.. R. S. Rekhchand Gopaldas Mohta Mills, Akola.

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

Court's or Judge's orders.

Mr. B. N. Mohta, Advocate for applicant.

CORAM : V.M. DESHPANDE, J.
DATED : NOVEMBER 17, 2017

Miscellaneous Civil Application St.

No.10471/2017 IS filed for restoration of the second appeal. The second appeal was filed by the applicant challenging the judgment and decree passed in Regular Civil Appeal No.58/2015, which was decided on 28.09.2016 by Principal District Judge, Akola. The said second appeal was having Stamp No.366/2017. The registry raised certain objections. However, the objections were not removed. Therefore, the case was placed before Registrar (Judicial). On the said day, the counsel for the applicant could not remain present before the Registrar (Judicial). On the said day, the Registrar (Judicial) passed a conditional order. However, during the stipulated period the office objections could not be removed. Therefore the stamp was refused. For moving an application for restoration, there is a delay of 64 days. Therefore Civil Application No.1537/2017 was filed for condonation of delay.

Perusal of the application for restoration so also the application for condonation of delay shows that it is affirmed by Mr. Bhimsing Nawalkishorji Motha, Advocate appearing for the applicant who has stated on affidavit that when the matter was listed on the board of the Registrar (Judicial), due to mistake, he could not notice the same. Consequently, he could not remain present on 09.02.2017 resulting into having no knowledge of the conditional order.

I see no reason not to accept the statement on affidavit made by the legal practitioner himself. The litigant should not be deprived of an opportunity to get the matter decided on merit.

In that view of the matter, the application for condonation of delay as well as the application for restoration of appeal both are allowed. The delay is condoned. The second appeal is restored to the file however subject to the cost of Rs.1,000/- to be paid to the High Court Bar Association within two weeks from today. The applicant is directed to place receipt showing payment of costs to the High Court Bar Association. The order refusing stamp is revoked. Officer is directed to register the second appeal.

The applicant is directed to remove the office objections within three weeks from today.

The applications stand disposed of accordingly.

JUDGE