

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (O) NO.1639 OF 2013
IN
MCAST NO.19538 OF 2013
IN
SECOND APPEAL NO.8 OF 2006 (D)

KAWADU GOVINDRAO FUSE (DEAD) & OTHERS
VS
PURUSHOTTAM TULSHIRAM FUSE

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

Court's or Judge's orders

Shri A. S. Bhendakar, Advocate for the appellants.
Shri Nitin Vyawahare, Advocate for respondent No.1.

CORAM : A.S. CHANDURKAR, J.
DATED : JUNE 16, 2017.

By this application, it is prayed that the delay in filing restoration application be condoned. The appellant No.1 Kawadu expired on 14-2-2010. It is stated in the application that the said appellant No.1 was in contact with his Counsel and on account of his death, no other family member contacted his Counsel. The appeal was dismissed for want of prosecution on 2-7-2010. Thereafter the applicant on 25-10-2013 made enquiries with the Counsel who informed him about Pursis being filed with regard to death of Kawadu. After taking further steps, the present application has been moved.

The application is opposed by the respondent no.1 by filing reply. It is stated that the reasons assigned are not sufficient. The manner in which the knowledge was obtained by the applicant in the year 2013 is also not stated.

The appeal pertains to the year 2006 and during its pendency the appellant no.1 expired on 14-2-2010. Pursis to that effect was filed on record and ultimately on 2-7-2010 the appeal was dismissed for want of prosecution. Considering the fact that the appeal was pending since 2006 the reason assigned that the applicant made enquiries in the year 2013 cannot be disbelieved. Though it is true that particular details have not been mentioned, I find that the delay has not been deliberately caused. The appeal deserves to be considered on merits. Subject to the applicant paying costs of Rs.2000/- to respondent No.1 within two weeks, the delay in filing restoration application stands allowed.

Civil application is allowed and disposed of.

MCAST NO.19538 OF 2013.

Considering the reasons mentioned in the application, the same is allowed. The order dated 2-7-2010 is recalled and the appeal is restored to file.

Misc. Civil Application is disposed of.

JUDGE

/MULEY/