

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

CIVIL APPLICATION NO.1402/2017 IN MISC. CIVIL APPLICATION ST.
NO.20426/2017 (RESTORATION) IN SECOND APPEAL NO.232/2016
Smt. Meenatai Bhayyaji Barai..vs..Smt. Vithabai w/o Pundlikrao Satpute & Ors.

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

Court's or Judge's orders.

Mr. Y. V. Nayyar, Advocate for applicant.
Mr. I. A. Fidvi, Advocate for non applicants.

CORAM : V.M. DESHPANDE, J.
DATED : NOVEMBER 22, 2017

1. Heard Mr. Nayyar, learned counsel for the applicant and Mr. Fidvi, learned counsel for the non applicants.

2. The applicant has filed the second appeal which was registered as Second Appeal No. 232/2016. On 05.05.2016, notices were issued by this Court in the said second appeal after formulating the substantial questions of law. The second appeal was pending for its admission. On 01.08.2016, the second appeal was placed on 29.08.2016 at the request of the counsel for the appellant with an observation that if on the next date the counsel for the appellant is not available, he is to make alternate arrangement, failing which the costs of Rs.5,000/- will have to be paid by the appellant. On 28.09.2016, since the amount of costs is not paid, four weeks time was

granted and the matter was placed on 26.10.2016. Ultimately, the matter was listed on 08.02.2017. On the said day, none appeared for the appellant and the matter was dismissed for want of prosecution. Therefore, the present application for restoration of the appeal is filed.

3. In moving the application for restoration of the second appeal, there is a delay of 192 days. According to the learned counsel for the applicant, he himself was suffering from serious ailment and in fact suffered a heart attack and was admitted in the hospital. Also, the applicant was unable to attend the Court due to medical problem of her daughter in law.

4. Mr. Fidvi, learned counsel for the non applicants submits that there is no dispute about the ill health of Mr. Nayyar, learned counsel for the applicant. However, he has pointed out that two different reasons are made in paragraph no.2 of the application. When this was confronted to the learned counsel, he was to cut sorry figure and submit that it is the mistake of technology that the application is printed by using the “Cut and Paste” method. The Court is really at pains to express that the application should not be drafted unless and until the mind is applied while drafting the application.

5. Mr. Fidvi, though a junior member of the bar has shown magnanimity in pointing out that if the

applications are allowed he is ready to contest the matter. This Court appreciates the gesture shown by the junior member of the bar.

6. Resultantly, both the applications are allowed subject to the payment of costs of Rs.1,000/- to the High Court Bar Association within one week from today. It is expected from Mr. Nayyar, learned counsel that the costs will be paid by him from and out of his pocket. He shall furnish receipt of payment of the costs on record.

7. With these observations, the applications are allowed. The delay is condoned. The second appeal is restored to file. The appeal be kept for final hearing as per its turn.

This Court again appreciate the gesture shown by the junior member of the bar.

JUDGE