

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
AURANGABAD BENCH, AURANGABAD**

9 CIVIL APPLICATION NO. 1129 OF 2017
IN LPA/187/2010 WITH CA/3907/2018 IN CA/1129/2017

KESHAV RANGNATH EKBOTE DECEASED THROUGH HIS L.RS.
RAMESH KESHAV EKBOTE
VERSUS
SAMBHAJI SHRIPATI BANKAR DECEASED THROUGH HIS
L.RS. BABAJI S. BANKAR (DECEASED) A.

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Advocate for Applicant : Mr. Shelke Shivaji T.
Advocate for Respondents 1a,1b,1d To 1h, 2a To 2d,
2e-i to 2e-iii, 2f : Mr.N.C.Garud

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**CORAM : T.V.NALAWADE
AND
K.L.WADANE, JJ.**

DATED : 9th April, 2018

O R D E R :

Application is filed for condonation of delay of 1790 days caused in filing application for setting aside the order of dismissal of Letters Patent Appeal for default and for restoration of the Letters Patent Appeal.

2. Both sides are heard.

3. It is the contention of the applicant that the legal representatives of respondent no.3 are brought on record and the appellant was expected to take steps. This Court by order dated 23.2.2011 granted time for taking steps.

4. Learned counsel showed to this Court the record and record shows that on 5.4.2011 steps were taken by the appellant and he had shown respondent nos. 4 to 7 as legal representatives of deceased respondent no.3. Necessary amendment was made in appeal memo.

5. In view of these circumstances, learned counsel for the applicant submitted that there was no necessity of taking more steps and he had shown respondent nos. 4 to 7 as legal representatives of deceased respondent no.3. He submitted that in spite of this position, due to mistake committed by the office of this Court, matter was again put up before the Court with remark that steps were not taken to serve the notice of legal

representatives of deceased respondent no.3.

6. Learned counsel for respondent has filed reply and has taken strong objection to the application.

7. It appears that on 11.4.2011 on the basis of such remark, the Court made order of dismissal of appeal. Again on 26.7.2011 time of four weeks was given. Appeal was again placed before the Court on 26.8.2011 and on that day, entire appeal came to be dismissed.

8. It is true that there was some mistake committed by the office of this Court and also by this Court in dismissing the proceeding at least as against legal representatives of deceased respondent no.3 in the order dated 11.4.2011, when the legal representatives of deceased respondent no.3 were brought on record.

9. Learned counsel submitted that the applicant was suffering from some ailment of heart, and therefore, steps could not be taken in time.

10. The other submission made by the parties show that the appellant is not disputing that the tenant is in possession. The decision had gone in favour of the tenant and the said decision given by the learned Single Judge of this Court was under challenge in Letters Patent Appeal. Nothing could have been achieved by the appellant by not taking steps to bring the legal representatives of deceased respondent no.3 in time. On the other hand, it is the appellant who could have shown interest to take steps as early as possible, as the appellant land lord was not in possession. This circumstance cannot be ignored by the Court when such proceeding is before the Court for consideration. This Court holds that sufficient cause is shown and delay deserves to be condoned. Learned counsel for the appellant makes a

statement that at this stage he is not pressing for stay.

11. In view of above, application is allowed and delay is condoned. The order of dismissal for default is hereby recalled. Letters Patent Appeal is restored to its original stage. The appellant to take necessary steps in respect of all the respondents within one month and if such steps are not taken within the time as directed, the entire matter shall stand dismissed without back reference to the Court.

(K.L.WADANE, J.)

(T.V.NALAWADE, J.)

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