

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

**927 CIVIL APPLICATION NO. 15013 OF 2017
IN SA/56/2006**

**SHAKILABEGUM ALLABAKSHA MANIYAR AND ANOTHER
VERSUS
SHRIDHAR VINAYAKRAO MAHAJAN**

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Advocate for Applicants : Shri K.S.Patil h/f.
Shri S.S.Choudhary

Advocate for Respondent : Shri Mandar Deshmukh
h/f. Shri S.G.Chapalgaonkar

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CORAM : P.R. BORA, J.
Date : July 27, 2018

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PER COURT :-

1 The present application is filed by the applicants for restoration of Second Appeal No.56 of 2006, which has been dismissed in default vide order passed by the Registrar (Judicial) on 21.04.2010. The delay caused in filing the present application is of 2758 days.

2 It is the contention of the applicants that the order passed by the Registrar (Judicial) was not noticed by the applicants as well as by the Counsel appearing on behalf of the applicants. It

is further contended that the applicants received the notices issued from the Court of Civil Judge, Junior Division, Lohara in Regular Darkhast No.4 of 2017 on or about 30.10.2017 and only thereafter, the applicants became aware of the fact that the Second Appeal filed by them has been dismissed by the order of the Registrar (Judicial) in the year 2010 itself. It is further contended that thereafter, all prompt steps are taken by the applicants in filing the present application.

3 The learned Counsel for the applicants submitted that the Second Appeal was admitted and the notices were issued thereafter. The learned Counsel further submitted that the applicants were under the impression that since the appeal has been admitted, it may come for hearing after couple of years and therefore, they did not make enquiry with their Counsel. The learned Counsel appearing for the applicants submitted that the applicants are residing in remote place and that

is also one of the reason that they were prevented from taking steps within the stipulated period. The learned Counsel submits that there are substantial grounds raised in the Second Appeal by the appellants/applicants and as such opportunity needs to be given to them to agitate their matter on merits.

4 The learned Counsel for the applicants relied upon the order dated 18.06.2018 passed by this Court in Civil Application No.14168 of 2016 to support the contentions raised in the application.

5 The respondent has opposed the application by filing his affidavit-in-reply. Learned Counsel appearing on behalf of the respondent submitted that no sufficient cause is made out for condoning the delay. The learned Counsel inviting my attention to Paragraph No.5 of the application, wherein reasons for occurrence of delay are explained, submitted that the delay of huge period

of seven years cannot be condoned on such grounds. Learned Counsel for the respondent further submitted that valuable rights accrued in favour of the respondent cannot be lost sight of while considering the application filed by the appellants/applicants.

6 The learned Counsel for the respondent placed reliance on the Judgment of the Hon'ble Apex Court in the case of **Balwant Singh (Dead) Vs. Jagdish Singh and Others, 2010 (8) Supreme Court Cases, 685** and Judgment rendered by this Court in the case of **Rajendra Namdeorao Akre Vs. Rajkumar Bhalerao Balbudhe and another, 2016 (1) Mh.L.J., 184**. The learned Counsel submitted that in the absence of sufficient cause shown by the appellants/applicants, the application be rejected.

7 After having considered the submissions advanced by the learned Counsel for the respective

parties and on perusal of the Judgments and documents, apparently it appears that no case is made out by the appellants/applicants to condone the huge delay of more than seven years caused in filing the present application. The suit of perpetual injunction was filed against the present respondent and the same was decreed in the year 2003. Though, the present applicants preferred the First Appeal before the District Court, the same also came to be dismissed on 20.08.2005.

8 The record shows that after admission of the Second Appeal, the appellants/applicants did not care for serving the respondent and though opportunity was given, it was not availed of and eventually, the order came to be passed by the Registrar (Judicial) dismissing the Second Appeal in default.

9 The contention of the appellants/applicants that the Registrar (Judicial) of this Court was

not having any authority to dismiss the Appeal vide the impugned order cannot be accepted. The order passed by the learned Registrar (Judicial) is perfectly within his powers under the High Court Appellate Side Rules. The record shows that despite due opportunities given to the appellants/applicants, they did not take any step to serve the respondent and that was the reason that the Appeal came to be dismissed in default vide order passed on 21.04.2010. The contention of the appellants/applicants that the said order could not be noticed and they came to know about dismissal of the Appeal only after the notices in Regular Darkhast No.4 of 2017 were served upon them, is also difficult to be accepted.

10 It was primary duty of the appellants/applicants to see that the respondent is served. It is unconscionable that though the Appeal was dismissed in default on 21.04.2010, the said fact was not noticed by the appellants/applicants for a

long period of seven years. Though, it cannot be expected that the litigant shall go on making enquiries about pending Appeal with his Counsel every month or every fortnight, it also cannot be accepted that for years together the litigant will not bother to enquire about the status of his pending Appeal. It is explicitly revealed that the appellants/applicants were not at all diligent in prosecuting their Appeal. While considering the request of the appellants/applicants, the Court cannot be oblivious of right accrued in favour of the respondent decree holder. In absence of any cogent and sufficient explanation provided by the appellants/applicants for the huge delay of seven years, I am not inclined to allow the present application. Hence, the following order:-

ORDER

The Civil Application is rejected.

(P.R. BORA, J.)