

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**CIVIL APPLICATION NO.2026 OF 2016
IN
WRIT PETITION NO.6564 OF 2006**

Mallappa Annappa Berad .. Applicant

V/s.

Suresh Bhupal Ainapur and Ors. .. Respondents

Mr.Yuvraj Gharat I/b Mr.Vijay Killedar for the applicant

Mr.Swaroop Karade I/b Mr.S.S.Sha for the respondent nos.1 to 8

Mr.Prathamesh Bhargude I/b Mr.S.B.Deshmukh for the
respondent no.11

CORAM: K.K. TATED, J

DATED : NOVEMBER 29, 2018

P.C. :

1 Heard.

2 By this Civil Application, Applicant is seeking condonation of delay in filing the Civil Application and also to recall the order dated 19.11.2015 passed by this court by which Writ Petition No.6564 of 2006 stands dismissed for non-prosecution.

3 The learned counsel for the Applicant submits that the

matter was assigned to Siddharth Gadve colleague of the advocate on record who was not present when the matter was called out on 17.11.2015. He submits that in the interest of justice, this Hon'ble Court be pleased to recall the order dated 19.11.2015 for hearing of Writ Petition on its own merits. He submits that if Civil Application is not allowed, irreparable loss will be caused to the Applicant.

4 On the other hand, the learned counsel for the Respondent nos.1 to 8 Mr.Swaroop Karade and learned counsel for Respondent no.11 Mr.Prathamesh Bhargude vehemently opposed the present Civil Application. Both the counsel submit that Applicant has not shown sufficient cause for condonation of more than 200 days delay in filing the Civil Application. Hence, there is no substance in the present Civil Application and same be dismissed with costs.

5 I have heard both the sides.

6 It is to be noted that Applicant has specifically stated in paragraph 4 of that application that the colleague of the advocate on record remained absent when the matter was called out.

7 Considering these facts and because of mistake on the part of advocate, litigant should not suffer, I am satisfied that the Applicant has made out a case for allowing the Civil Application, but at the same Applicant to pay cost of Rs.5,000/-. Hence, following order is passed:

- a) Delay in filing the Civil Application is condoned.
- b) Order dated 19.11.2015 passed by this court (Coram:R.G.Ketkar, J.) is recalled and matter is restored on file for hearing on its own merits.
- c) Applicant to pay cost of Rs.5,000/-.
- d) Cost to be deposited in the office of the Kirtikar Law Library, High Court, Bombay, on or before 20.12.2018 and place on record receipt to that effect, failing which the Civil Application shall stand dismissed without further reference to the court.
- e) Civil application stands disposed off accordingly.

(K.K. TATED, J.)