

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

**CIVIL APPLICATION NO. 316 OF 2016  
IN  
SECOND APPEAL NO. 203 OF 1994  
WITH  
SECOND APPEAL NO 203 OF 1994**

Mahadeo Nagappa Surve ... Applicant.  
V/s.

Smt. Hirabai Baburao Korade, deceased through  
Legal heirs & Ors. ... Respondents.

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Mr. Amit B. Borkar, Advocate for the Applicant.

Mr. Sumit Kate i/by Mr. Uday Warunjikar, Advocate for Respondent  
No. 1(a) to 1(c).

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**CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.**

**DATE : JUNE 14, 2018.**

**P.C. :**

1 This application is for condonation of delay and for restoration of the Second Appeal, which came to be dismissed on 18.03.2015 for non-removal of the office objection. The office objection was that no steps were taken for service of summons on Respondent No. 3 and his legal heirs. Learned counsel for the Applicant submits that the appellant does not intend to proceed against Respondent No.3 and hence, his name may be deleted from the Appeal Memo.

2 As regards, Respondent No. 2, the Second Appeal is already dismissed for default.

3 Therefore, now this application for restoration of the appeal by condoning the delay, is allowed only in respect of Respondent No.1.

4 The Appeal is accordingly restored to file against Respondent No. 1.

5 In the Second Appeal, it is submitted by the learned counsel for the Appellant that this Court has already stayed execution of possession decree by order dated 01.03.1994. In view of the restoration of the Appeal, it is submitted that the same order is required to be continued in view of the fact that already the Respondent No. 1 has applied for execution of the possession decree.

6 Learned counsel for Respondent No. 1 submits that he has no objection to continue the stay to possession of decree, subject to the condition that hearing of the Appeal is expedited, as it is of 1994.

7 In view of the fact that the Appeal is already ready for final hearing, it is directed to be added to the final hearing board **w.e.f. 9<sup>th</sup> July, 2018.**

[DR.SHALINI PHANSALKAR-JOSHI, J.]

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