

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

APPEAL FROM ORDER NO.293 OF 2016

Linesh Thayyil

..Appellant

vs.

Chhotalal Gajanan Khole & Ors.

...Respondents

Mr.Sameer R. Bhalekar for the Appellant.

Mr.Amrut Joshi a/w Ms. Ruchita Upadhyay I/b R.V.J. Associates for the
Respondent Nos.1 and 2.

CORAM : V. M. DESHPANDE, J.

DATE : 19th JULY, 2018

P.C.:

. Heard learned counsel for the appellant. The present appeal takes exception to the order passed by the learned Judge of City Civil Court, Mumbai dated 13/1/2016 passed in Notice of Motion No.2137 of 2015 in Suit No.7076 of 2006. By the impugned order the Court below has rejected the notice of motion taken out for restoration of the suit, which was dismissed on 27/4/2015 for want of prosecution.

2. After hearing the learned counsel for the appellant and perusing the impugned order, it is crystal clear that after the dismissal of the suit for want of prosecution, application for restoration under Order IX Rule 9 of CPC was filed. Though application was time barred by limitation, neither separate application under section 5 of the Limitation Act was filed nor a prayer was made in the Notice of Motion for condonation of delay.

3. In that view of the matter, in my view the Court below has correctly recorded the finding that the Notice of Motion was beyond

limitation. No exception can be taken. Appeal is rejected and is accordingly disposed of.

(V. M. DESHPANDE, J)