

Vidya Amin

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

**CIVIL APPLICATION No. 614 OF 2016 IN S.A. NO. 936/2003
WITH
CIVIL APPLICATION No. 289 OF 2018 IN S.A. NO. 936/2003
WITH
CIVIL APPLICATION No. 426 OF 2018 IN S.A. NO. 936/2003
WITH
CIVIL APPLICATION (St.) No. 5732 OF 2018 IN S.A. NO. 936/2003
WITH
CIVIL APPLICATION (St.) No. 5733 OF 2018 IN S.A. NO. 936/2003
WITH
CIVIL APPLICATION (St.) No. 5734 OF 2018 IN S.A. NO. 936/2003**

Karimbhai Haidarbhai Mulani & Ors. ... Applicants
Vs.
Baban Balabhai Mulani (Decd.) through
LRs ... Respondents

Mr. N.V. Walawalkar, Senior Advocate i/b. A.G. Revankar & Co., for
the applicants.
Mr. Madhav J. Jamdar, Advocate for respondent nos. 1/A to 1/C.

CORAM: **MRS.MRIDULA BHATKAR, J.**
DATE: **13th April, 2018.**

P.C.:

CIVIL APPLICATION NO. 614 OF 2016

This Application is moved for condonation of delay of 8 years and 125 days and for restoration of Second Appeal, which was dismissed as the result of non-compliance of conditional order dated 25th October, 2007.

2. The learned senior counsel for the applicants has submitted

that the Appeal was admitted on 21st April, 2005 and thereafter conditional order of removal of office objections within 6 weeks was passed on 25th October, 2007. The appellants failed to comply with the order and hence, the Appeal was dismissed. The learned senior counsel submitted that after admission of Appeal, the papers were taken back by the appellants, as they were thinking of engaging some other Advocate. He further submitted that the papers remained with him and there was no communication between the appellants and his attending counsel, therefore, the Application for restoration of Appeal was not made within time and it has caused delay of more than 8 years.

3. The learned counsel for the respondents has vehemently opposed this Application for restoration of Second Appeal on the ground that no liberal approach can be taken by the Court while condoning this inordinate delay of 8 years and 125 days. He has submitted that the conduct of the appellants has to be taken into account while condoning delay. He submitted that after dismissal of Appeal, some of the appellants/applicants have entered into transaction in respect of portion of the suit lands with one Mr. Bhoir, who claimed to be Power of Attorney Holder of the

respondents/plaintiffs or with third persons. He submitted that in those Agreements, the fact of dismissal of Second Appeal was not mentioned. Hence, this delay is not be condoned. In support of his submissions, the learned counsel relied on the judgment of the Hon'ble Supreme Court in the case of **Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy & Ors., reported in (2013) 12 SCC 649.**

4. The learned senior counsel for the applicants submitted that the fact of pendency of Second Appeal and even the Appeal was dismissed was mentioned in the Agreements by which some portion of the suit land was transacted.

5. Heard the submissions. Considered the ratio laid down in the case of **Esha Bhattacharjee** (*supra*) wherein the Hon'ble Supreme Court has explained the meaning of sufficient cause, which is required to be examined by the Court. In the said case, the issue was in respect of appointment of teacher, who was not allowed to join her duty. Esha filed Writ Petition. She joined the duties after seeking the order from the Single Judge of High Court. The Managing Committee preferred Appeal with an Application for condonation of

delay, which was resisted, however, the Division Bench condoned delay and passed interim order and Hon'ble Supreme Court had an occasion to consider and laid down principles while deciding the Application for condonation of delay. In paragraph 21 of the said ruling, the Hon'ble Supreme Court gave various direction and laid down principle how to deal with the Application for condonation.

6. I have considered the submissions. By keeping this guidelines on the background, it is necessary for the Court to deal with the Application for condonation by taking into account the facts and circumstances of the case. The Application in hand is in Second Appeal, which was admitted by the Court by framing substantial question of law in 2005. The Appeal was dismissed for non-removal of office objections. As per the rules of Advocates Act, once Advocate files Vakalatnama, he has to take care of the matter unless he seeks permission from the Court to withdraw from the matter. There may be instances as such argued by the learned senior counsel for the applicants that the litigants/clients may take away the papers for various reasons from the Advocate and the Advocate may lose track or may feel that it is not possible for him to keep track of the matter, however, as per the Advocates' Act, registered notice is

required to be given by the Advocate to the litigant for his withdrawal, then only his non-appearance is justified. It appears that in this matter, there was miscommunication between the advocate and the party. The appellants have again approached and requested the counsel to appear in this matter, therefore, this Application is again taken out by the same counsel. Be that as it may, as the Appeal is already admitted and the appellants are ready to remove all the office objections, i.e., furnishing the copy of the paper book, which is now filed and is on record. Considering these facts, I am inclined to condone the delay and allow the Application for restoration of Second Appeal with cost.

7. It is noted that if at all the parties have other dispute in respect of transaction after dismissal of Second Appeal, the parties may take appropriate proceedings.

8. Delay is condoned. The order of dismissal of Second Appeal dated 25th October, 2007 is recalled. Second Appeal is restored to its original file. The cost of Rs.10,000/-, which is to be paid by the appellants to the respondents, is to be deposited in this Court within two weeks from today.

9. The learned counsel for the respondents submitted that before dismissal of Second Appeal, there was an order of status quo, however after dismissal till today, things have been changed and due to many transactions, the order of status quo is to be granted as on today.

10. The learned senior counsel for the applicants submitted that there is a lapse of 8 years after dismissal and restoration of Appeal, in between, though the transactions have taken place between the appellants and Power of Attorney Holder of the respondents/plaintiffs or the third persons, there is no change in the status of the suit land and the appellants' possession thereof.

11. The learned counsel for the respondents disputes the point of possession as on today on the basis of Agreements.

12. At this stage, this Court cannot go into the issue of possession, which may be the subject matter of final hearing of the Second Appeal or if at all any interim application separately moved by either of the parties. However, the order of status quo is to be taken as on today.

13. Civil Application No. 614 of 2016 is allowed and is accordingly disposed of.

14. In all other Civil Applications, the learned counsel for the respondents wants time to file reply. In view of this, stand over to 8th June, 2018.

(MRIDULA BHATKAR, J.)