

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

**CIVIL APPLICATION NO. 2813 OF 2018
IN
FIRST APPEAL NO. 1296 OF 2014**

Hussainsab Kasimsab Shaikh	...	Applicant
V/s.		
Dharmayya Arjun Bhoga		
(Since deceased) Through LR.s. & Ors.	...	Respondents

- Mr.Manoj Kumar Upadhyay for the Applicant.
- Mr.Sandip J. Ghogare for the Respondents.

CORAM : DR.SHALINI PHANSALKAR-JOSHI, J.

DATE : 30th AUGUST, 2018.

P.C. :

1] Heard learned counsel for the Applicant and learned counsel for the Respondents.

2] This is an application preferred by the Applicant/Appellant for restoration of the First Appeal, which came to be dismissed for non service upon the Respondent in February-2016. Thereafter, the Applicant has filed Civil Application No.3763 of 2016 for restoration of the Appeal, which also came to be dismissed for default on 10th January, 2017.

3] In view thereof, this fresh application is filed for restoration of the First Appeal and restoration of the Civil Application No.3763 of 2016. There is thus delay of about more than 514 days in taking out the present Civil Application.

4] Learned counsel for the Respondents has strongly resisted this application by submitting that not only the appeal is dismissed but even the restoration application is also dismissed and that too coupled with the fact that earlier sole Respondent has also expired after the dismissal of the First Appeal. It is submitted that no sufficient reason is given at all for condonation of this delay of about 2 years from dismissal of the appeal and also of 1 ½ year from dismissal of the application for restoration.

5] It is also urged that the only intention of the Applicant behind filing this application is to somehow or other to prolong the execution of the decree, which is passed in the year 2014 and that too in a suit filed in the year 1998. Hence, according to learned counsel for the Respondents, no case is made out for restoration of the appeal.

6] In my considered opinion, it is true that no sufficient reason or cause is made out as earlier also the appeal is dismissed and the application for restoration is also dismissed. Considering that the suit is of the year 1998 and throughout the proceeding, the Appellant has remained negligent and callous and then he has not taken a note to file application for bringing on record the legal heirs of the sole Respondent and no sufficient explanation is given for condonation of delay or for restoration of the earlier application or for restoration of the appeal.

7] Therefore, this Application stands dismissed.

8] At this stage, the request is made to grant stay to the operation of this order. This request is strongly resisted by learned counsel for the Respondents. This Court also does not find any reason to stay the order in the light of the facts as stated above. Hence, the said request is rejected.

[DR.SHALINI PHANSALKAR-JOSHI, J.]