

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.585 OF 2016
IN
CIVIL REVISION APPLICATION (STAMP) NO.21777 OF 2016
IN
SECOND APPEAL (STAMP) NO.31352 OF 2015

The State of Maharashtra,
Through Revenue & Forest Department,
Mantralaya, Mumbai & Anr.

.... Applicants

V/s.
Damodar Vinayak Chaphalkar,
(Since Deceased), through LRs.

.... Respondents

Mr. A.K. Patil, A.G.P., for the Applicants-State.

Mr. Sarthak Diwan, i/by Mr. Ashutosh M. Kulkarni, for the Respondents.

CORAM : DR. SHALINI PHANSALKAR-JOSHI, J.

DATE : 2ND APRIL, 2018.

P.C. :

1. Heard Mr. Patil, learned A.G.P. for the Applicants-State, and Mr. Diwan, learned counsel for the Respondents.

2. This Civil Application is for condonation of delay in filing Civil Revision Application. The delay is of 252 days.

3. The cause for filing the above Civil Revision Application is the conditional order passed by this Court on 18th November 2015, in Second Appeal (Stamp) No.31352 of 2015, granting two weeks time to

pay the deficit Court Fees, failing which the registration was to stand automatically refused.

4. On account of non-compliance of the above order, namely, the payment of deficit Court Fees, the conditional order became operative and, resultantly, the registration of Second Appeal (Stamp) No.31352 of 2015 stood refused.

5. The conditional order passed by the learned Registrar (Judicial-I) is referable to Rule 4(vi) of Chapter V of the High Court (Appellate Side) Rules. Against such an order, there is a remedy of 'Revision', provided by Rule 6 of Chapter V of the High Court (Appellate Side) Rules. The said Rule provides that, *“such order shall be revisable upon a regular stamped application, which shall be filed within seven days from the date of the order”*.

6. It may be stated that, the Second Appeal (Stamp) No.31352 of 2015 was filed by the Applicants-State on payment of nominal Court Fees. However, as per the statement made in the Civil Application for condonation of delay, the 'Acquiring Body' has not deposited the Demand Draft for payment of the deficit Court Fees with the Office of the Government Pleader, High Court, Mumbai, in time. Now the Demand Draft is received. Hence, as the delay caused in depositing the deficit

Court Fees was only on account of non-receipt of the Demand Draft in time, it has to be held that, the sufficient cause is made out for condonation of the delay and for allowing the Civil Revision Application to set aside the conditional order passed by the Registrar(Judicial-I).

7. In the identical fact situation, earlier also, this Court has come to the conclusion that, notice to the other side is not required, insofar as condonation of delay in filing Civil Revision Application for setting aside the conditional order passed by the Registrar (Judicial-I) of this Court is concerned. The learned A.G.P. has also relied upon an order of this Court to that effect passed in *Civil Application No.458 of 2015 in Civil Revision Application No.15443 of 2015 in First Appeal (St.) No.1514 of 2015 in L.A.R. No.188 of 2007, dated 30th September, 2015.*

8. In view thereof, the present Civil Application for condonation of delay is allowed and made absolute in terms of prayer clause (b).

9. The Civil Revision Application for restoration of Second Appeal (Stamp) No.31352 of 2015 is also allowed in terms of prayer clause (b) thereof. Resultantly, Second Appeal (Stamp) No.31352 of 2015 is restored to the file, subject to deposit of the deficit Court Fees within a period of eight weeks from today.

10. The Civil Application for condonation of delay and the Civil Revision Application for restoration of Second Appeal (Stamp) No.31352 of 2015, are, accordingly, disposed of.

[DR. SHALINI PHANSALKAR-JOSHI, J.]