

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

**CIVIL APPLICATION NO. 3977 OF 2018  
IN  
FIRST APPEAL NO. 1894 OF 2013**

|                              |                 |
|------------------------------|-----------------|
| Vasanti Bhagoji Talegaonkar  | ... Applicant   |
| <i>In the matter between</i> |                 |
| Vasanti Bhagoji Talegaonkar  | ... Appellant   |
| Versus                       |                 |
| Rasika Ram Walekar @ Sushma  |                 |
| Damodar Pabrekar and others  | ... Respondents |

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Mr. Omkar Nagvekar, Advocate i/b Ms Prabha U. Badadare,  
Advocate for the Applicant.

Ms Avanti Mankar, Advocate a/w Mr. Jitendra Shukla, i/b M/s.  
G.H. Shukla & Co. for the Respondent No.1.

Mr. Yogesh Y. Dabke, AGP for the Respondent No.3.

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**CORAM : A. S. CHANDURKAR, J.**

**DATE : 5<sup>th</sup> DECEMBER, 2018.**

**P. C.:**

**CIVIL APPLICATION NO. 3977 OF 2018**

1. The prayer is to condone the delay in seeking restoration of the appeal. The appeal came to be dismissed as the appellant failed to comply with the conditional order dated 27<sup>th</sup> August, 2014 directing him to file private paper-book within a period of two years. In the application, the reasons for failure to file the private paper-book and the cause of delay has been mentioned. The prayer is opposed by the learned Counsel for the respondent

No.1 on the ground that the applicant has been negligent and despite grant of sufficient time the paper-book has not been filed. It is thus submitted that the application deserves to be rejected.

2. Upon hearing the learned Counsel for the parties, it is seen that the appeal came to be dismissed for failure to file paper-book. As observed in *AIR 1983 SC 876 (Kalipada Das and others Vs. Bimal Krishna Sen Gupta (dead) by Lrs.)*, which decision is relied upon by the learned Counsel for the applicant, the applicant himself cannot be blamed for failure to file the paper-book. At the same time, considering the period of delay involved, the respondent No.1 deserves to be compensated by awarding costs.

3. Accordingly, the civil application is allowed in terms of prayer clauses (b) and (c) subject to condition that the applicant shall pay costs of Rs.10,000/- to the respondent No.1 within a period of six weeks from today. Similarly, paper-book shall be filed within the aforesaid period of six weeks. On these terms, the civil application is disposed of.

#### **FIRST APPEAL NO. 1894 OF 2013**

. As the first appeal has been restored, the order dated 11<sup>th</sup> March, 2015 passed in Civil Application No. 2043 of 2013 shall continue to operate.

**( A. S. CHANDURKAR, J. )**