

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

CIVIL REVISION APPLICATION NO.649 OF 2017

Dyanoba Baburao Daswadkar .. Applicant
Vs.
Madhukar Bhikaji (Bhiku) Gujar & Ors. .. Respondents

Mr.Sandeep Marne for the applicant.

Mr.S.S. Redekar for the respondent nos.1, 3, 4, 5A to 5D & 6.

CORAM : R.D. DHANUKA, J.

DATE : 10th September 2018

P.C.:

. Heard learned counsel for the parties. I have perused the documents annexed to the application.

2. Learned trial Judge has allowed the application for condonation of delay of 374 days in making an application for restoration of the suit which is dismissed on 18th April 2002. The application filed by the respondent no.1 (plaintiff no.1) on 3rd May 2003 has been allowed on 6th September 2017 on payment of cost of Rs.2000/-.

3. Learned trial Judge has considered the oral as well as the documentary evidence while allowing the said application filed by the respondent no.1 in the impugned order dated 6th September 2017. In my view, the learned trial Judge ought to have imposed exemplary cost while allowing the application for restoration of the suit. The impugned order dated 6th September 2017 is substituted by allowing the application filed by the plaintiff no.1, however, on payment of cost of Rs.10,000/- which shall be paid by the plaintiff no.1 to the defendant no.2 within two weeks

from today. The plaintiff no.1 is directed to pay the balance amount of Rs.8,000/- after deducting the amount of Rs.2,000/- which is already paid by the plaintiff no.1 to the defendant no.2. The civil revision application is disposed of in aforesaid terms. The application for condonation of delay is allowed. The application for restoration of the suit shall be heard on its own merits.

R.D. DHANUKA, J.