

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**924 CIVIL APPLICATION NO.2680 OF 2014
IN SAST/6823/2014**

**SURATBAI BHURESINGH GIRASE AND ANOTHER
VERSUS
BATAN BATU GIRASE AND ANOTHER**

...

Mr. B.R. Waramma, Advocate for the applicants
Mr. M.V. Bhamre, Advocate for the respondent No.1

...

CORAM : SMT. VIBHA KANKANWADI,J.

DATE : 06th MARCH, 2019

PER COURT :

1 Present application has been filed for restoration of the Second Appeal with a prayer of condoning the delay of 9 years.

2 Applicant had filed the Second Appeal Stamp No.25882 of 1992 through Advocate before this Court at Principal Seat. It was stated that there were certain office objections in the said appeal viz. Synopsis was not filed and Vakalatnama not filed. Time was given from 02.07.1993 for four weeks to remove the said objections. However, the concerned Advocate who was representing the applicant did not remove the same. The said order was conditional order and therefore after the expiry of four weeks period, it was

treated that the Second Appeal is dismissed or it was not numbered also. It is, thereafter, stated that when the applicants made inquiry with their Advocate, their Advocate told that since the matter is from Dhule it would have been transferred to this Bench and accordingly, the applicant was directed to make inquiry with office of this Bench. The applicant says that he made inquiry between 1994 till 1995 regarding his matter, but could not get any concrete information. He has also contacted the office at the Principal Seat, but then it is stated that it was a cumbersome task for the ordinary layman. He ultimately, wrote a letter to the Registrar, Appellate Side of this Court regarding tracing out his matter and in making inquiry as to whether his matter is transferred to Aurangabad or not. It is stated that he could trace out ultimately the matter on 07.07.2003. He could find out the proper stamp number of the Second Appeal and the fact that his appeal was dismissed for non removing of those objections, it is stated that the things were beyond his control and on these grounds he prays for condonation of delay and the restoration of the appeal.

3 The application has been objected vehemently on the ground that delay of each and every day has not been explained. There is huge inordinate delay. No efforts were made by the concerned Advocate to

trace out the matter.

4 Heard both sides. Both the learned Advocates have made submissions in support of their respective contentions.

5 At the outset it cannot be said that since the matter appears to have been not traced out and because the matter ought to have been transferred to this Bench, the record of the Second Appeal appears to have been destroyed and then the matter was required to be reconstructed. It appears from whatever the record is with this Court, now, that when the matter was before the Principal Seat, a conditional order was passed on 02.07.1993 for removal of the office objections. But then since the office objections were not removed, it was treated as dismissed. But then with the stamp number only the application for restoration could have been filed. The applicant says that since 1994 he was searching for his matter and was not able to get any information either from the office of this Bench or at the Principal Seat. It also appears from the letter dated 01.12.2012, issued by the Assistant Registrar to Advocate Smt. B.P. Jakhade stating that by order dated 17.12.2011, Civil Application No.1885 of 2010 in Second Appeal Stamp No.25882 of 1992 was transferred. It was also stated that after the scrutiny of the matter it was revealed that the papers were already

destroyed at the Bombay office.

6 Under these together circumstances, when the actions were not controlled by the applicant, the delay appears to have been caused for getting the restoration of the application, that is a good ground to condone the delay and hence, the delay is hereby condoned. The appeal is restored. The office objections, then raised be complied with, within eight days after compliance of the said objection. The appeal be placed for consideration of this Court on 04.04.2019.

(Smt. Vibha Kankanwadi, J.)

agd