

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

Civil Application No. 04886 of 2018
(In Second Appeal No. 0455 of 2011)

District : Latur

Ramkisan s/. Tukaram Nalapure.

.. Applicant.

versus

Antram s/o. Tukaram Nalapure,
Died through L.R.,
Dayanand s/o. Antram Nalapure
& others.

.. Non-applicants.

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*Mr. A.N. Sabnis, Advocate, holding for
Mr. V.D. Gunale, Advocate, for the applicant.*

Mr. Milind Patil, Advocate, for respondent no.01A.

*Mr. Satish D. Bhosale, Advocate, for respondents
no.02A to 02E and 02H.*

*Mr. B.M. Dhanure, Advocate, for respondent
no.02F.*

Respondent no.02G died.

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 12TH MARCH 2019

ORAL ORDER :

01. Present application has been filed for getting delay of 98 days condoned in restoration of Second Appeal No. 0455 of 2011. Notice was issued to

respondent no.02E in the second appeal. It was in await category. But thereafter this Court had passed order on 13-11-2017, issuing fresh notice to respondent no.02E, returnable on 08-12-2017. In addition to the Court process, notice was to be served on the said respondent by Registered Post A.D. It is stated, that respondent no.02E was served but service affidavit was not filed by the applicant. A conditional order was passed by this Court and in pursuant to the same, it was trated that the appeal is dismissed. It is stated, that the applicant got knowledge about dismissal of the appeal in the month of February and, therefore, the delay has occurred. It is not intentional.

02. The application has been opposed on the ground that the applicant was not diligent. The delay of 98 days is not explained satisfactorily by explaining each and every day's delay.

03. Heard both sides.

04. It appears that this Court had passed order on 13-11-2017 for issuing fresh notice to respondent no.02E. Liberty was granted to serve the said respondent by Registered Post A.D. and it was also stated, that in case, the respondent is not served till 08-12-2017, the matter shall stand dismissed, without further reference to the Court. The applicant says, that inadvertently he failed to file service

affidavit though, according to him, the notice was served. Photo-copy of the notice given to the respondent has been filed on record along with the slip stating that it is sent by RPAD. Taking into consideration the fact, that it was a bona fide attempt made by the applicant to serve respondent no.02E, but then he failed to file the service affidavit, it has resulted in automatic dismissal of the appeal. The delay appears to be unintentional.

05. Hence, the following order :-

(a) The civil application is allowed.

(b) The delay in filing present application is condoned. Second Appeal No. 0455 of 2011 is restored to its original stage i.e. just prior to dismissal of the same.

(c) Learned Advocate Mr. S.D. Bhosale is appearing for respondent no.02E and, therefore, it is not necessary to issue notice to respondent no.02E again.

(d) Place Second Appeal No. 0455 of 2011 for consideration on 11th April 2019.

(Smt. Vibha Kankanwadi)
JUDGE

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