

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

**23 CIVIL APPLICATION NO.4229 OF 2019
IN RC/749/2016**

**MANOHAR KERBA BIRADAR
VERSUS
GOVINDRAO KERBA BIRADAR AND ANOTHER**

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**Advocate for Applicant : S.D. Tawshikar
Adv.Satish S. Deshmukh For R/1**

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**CORAM : MANGESH S. PATIL, J.
DATE : 18.11.2019**

PC. :-

Heard both the sides. Perused the record. The appellant from the Second Appeal has filed this Application for restoration of the Second Appeal which has been dismissed by the Registrar (Judicial) by order dated 24/8/2016 for want of removal of office objections. Since this Application for restoration has been filed after delay of 940 days, he is also seeking condonation of delay.

2] The learned Advocate for the applicant submits that he is an agriculturist and was relying upon his Advocate to pursue the matter, however, it was dismissed for want of technical compliance. The objections were not serious. It was only a matter of some underlines on some pages and some documents being illegible. There was no apparent reason for the applicant to ignore such objections. He could have easily removed it but for a communication gap between him and his advocate objections were not

removed.

3] The learned Advocate further points out that even after filing of the present Application, the learned Advocate did not pursue it and even it was dismissed for non compliance of the conditional order dated 24/4/2019. It is only thereafter that by engaging another Advocate, the present Application could be got restored subject to payment of costs as per the order dated 19/9/2019. He has already deposited the costs. He is ready to remove the office objections within 3 weeks. Valuable rights of the appellant/applicant to get his rights determined finally on merits would be lost if the Second Appeal is not allowed to be filed.

4] The learned Advocate for the Respondent no.1 strongly opposes the Application. He submits that at every stage the applicant has been guilty of laches. Even this Application for restoration has been filed after 2½ years which clearly demonstrates his indolence. He even allowed the present Application to be dismissed for want of steps and now again seeking indulgence. The request may be rejected.

5] It is trite that it is always appropriate to allow the rights to be determined on merits rather than by default. Obviously a person would not be entitled to seek any indulgence in the matters of the present kind where there are enormous laches and delay in prosecuting the Second Appeal. It is only after Respondent apparently pressed for execution of the impugned judgment and decree that the applicant seems to have awoken.

6] He also allowed the present Application to be dismissed and got it

restored by payment of costs. This additionally shows his approach in prosecuting the Second Appeal.

7] In my considered view, the Second Appeal can only be restored by directing the Applicant to pay heavy costs to the Respondent no.1 who is the original plaintiff.

8] The Application is allowed subject to payment of costs of Rs.10,000/- (Rs.Ten Thousand) to the Respondent no.1 within 4 weeks and subject to the condition that after payment of costs, the Applicant removes the office objections within 4 weeks thereafter.

9] Considering the nature of the dispute and the fact that the Respondent no.1 has already proceeded with the execution of the impugned judgment and decree and even a possession warrant has been directed to be issued, there shall be stay to the execution for a period of 4 weeks.

[MANGESH S. PATIL, J.]

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