

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

**CIVIL APPLICATION NO.168 OF 2018
IN
SECOND APPEAL NO.139 OF 1993**

Ganpati Hirji Nikam (since deceased)
through his legal heirs

Tukaram Ganpati Nikam & Ors.

.. Applicants

Versus

Ganpati Govind Chavan (since deceased)
through his legal heirs

Yashoda Ganpati Chavan & Anr.

.. Respondents

Mr.Venkatesh A. Shastry for the applicants.

Mr.Chandrakant N.Chavan for the respondent no.1.

CORAM : R.D.DHANUKA, J.

DATE : 3rd September 2019

P.C.:

. By this civil application, the applicants seek condonation of delay of 15 years and 211 days in filing the civil application and for seeking recall of the order dated 4th March 2002 passed by this Court thereby dismissing the second appeal which was dismissed for default for non compliance of the office objections by the applicants.

2. The said second appeal filed by the applicants was admitted by this Court. On 4th March 2002, this Court passed a conditional order for removal of all office objections within eight weeks from the date of the said order. It is the case of the applicants that the applicants being agriculturists and villagers and being unaware of the Court procedure,

were not aware of the status of the second appeal filed by them. On 3rd October 2017, the applicants through their advocate inquired with advocate Mr.Borulkar about the status of present second appeal. Mr.Borulkar, advocate replied that the second appeal being an old one, he would enquire about the status of the same and would inform the applicants. Thereafter, the applicants received a letter from Mr.Borulkar, advocate on 7th October 2017 informing the applicants that the second appeal came to be dismissed in view of non compliance of the conditional order passed by this Court on 4th March 2002. Along with the said letter, the learned advocate returned all the pleadings and documents in this matter lying in his office and also gave no objection. Within 30 days from the date of received of the said letter from erstwhile advocate along with pleadings, documents and NOC, the applicants filed this application inter alia praying for condonation of delay of 15 years and 211 days in filing the civil application.

3. Mr.Shastry, learned counsel for the applicants invited my attention to the averments made in the civil application and the documents annexed to the civil application. He submits that since the applicants were not aware about the status of the second appeal and came to know about dismissal of the second appeal only upon the receipt of the letter addressed by the erstwhile advocate, the applicants filed this civil application within 30 days thereafter.

4. Mr.Chavan, learned counsel for the respondent no.1, on the other hand, invited my attention to the letter annexed at Exhibit 'A' to the civil application and would submit that the said letter is not signed by the erstwhile advocate himself. The said letter is undated. He submits that delay is not sufficiently explained by the applicants in the civil applications and thus gross delay more than 15 years shall not be condoned. Mr.Chavan, learned counsel for the respondent no.1 did not dispute that the applicants are agriculturists and are villagers. The second appeal was already admitted by this Court.

5. In my view, for the default on the part of the advocate, if any, the parties shall not suffer. Within 30 days from the date of the information received by the erstwhile advocate that the second appeal preferred by the applicants came to be dismissed for non compliance of the office objection, the applicants have filed this civil application for condonation of delay and for recall of the order dated 4th March 2002. Delay is accordingly condoned on payment of costs of Rs.10,000/- which shall be paid by the applicants to the Kirtikar Law Library, High Court, Bombay within two weeks from today. Receipt shall be produced before the Sheristadar of this Court within one week from the date of payment of costs.

6. The applicants are granted four weeks' time to remove all office objections. It is made clear that no further extension of time would be granted. If payment of costs is not paid and if office objections are not removed within the time prescribed, second appeal to stand dismissed without further reference to the Court.

7. In view of the fact that except memo of second appeal, all other papers are destroyed by the office as per High Court (Appellate Side) Rules, 1960, parties are at liberty to reconstruct the papers and proceedings within four weeks from today.

8. Place the second appeal on board for 'hearing and final disposal' as and when this matter is taken on board by the office.

R.D.DHANUKA, J.