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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Civil Application (CAO) No.2143 of 2018
In
Misc. Civil Application (R)(St.) No.7031 of 2018
In
First Appeal No.174 of 2002 (D)
The State of Maharashtra
Versus
M/s. Quraishi Brothers

And

Civil Application (CAO) No.1077 of 2018
In
Misc. Civil Application (St.) No.7034 of 2018
In
First Appeal No.57 of 2003 (D)
The State of Maharashtra
Versus
M/s. Quraishi Brothers

Office Notes, Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's
orders
and Registrar's order

Shri M.R. Joharapurkar, Advocate for Applicant (Appellant).
Shri A.V. Khare with Ms Vidya Umale, Advocates for
Respondent.

Coram : R.K. Deshpande, J.
Date : 13th September, 2019

Heard the learned counsels appearing for the parties.

Civil Application No.2143 of 2018 is for condonation of
delay of 748 days in filing an application for review of the
judgment dated 2-2-2016 passed in First Appeal No.174 of
2002, and Civil Application No.1077 of 2018 is for

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condonation of delay of 858 days in filing an application for restoration of First Appeal No.57 of 2003. The reply is filed opposing the applications for condonation of delay.

The applicant is the Department of the State Government, prosecuting the appeal. The project in respect of which the matter pertains, was handed over subsequently to Godavari Marathwada Irrigation Development Corporation, which was prosecuting the matter for and on behalf of the State of Maharashtra, Department of Irrigation. Shri Rajan Pillai, Advocate, was engaged specially for this purpose. He expired on 20-6-2004. On 15-10-2015, First Appeal No.57 of 2003 was listed for final hearing. Since none appeared for the appellant, the matter was dismissed in default. Thereafter, First Appeal No.174 of 2002 filed by the respondent in the same matter came up for hearing on 2-2-2016, when it was partly allowed by setting aside the decision of the lower Court and restoring the decision of the Arbitrator. In those proceedings also, none appeared for the original respondent- State of Maharashtra.

When the execution proceedings were taken out and the notice was received, the applicant came to know that First Appeal No.57 of 2003 was dismissed in default, and First Appeal No.174 of 2002 was partly allowed. Thereafter, both these applications are filed in these two appeals for condonation of delay and restoration.

Shri Khare, the learned counsel appearing for the respondent- M/s. Quraishi Brothers, submits that

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Shri Rajan Pillai, Advocate, expired in the year 2004, there was a power of Shri Manoj Pillai, Advocate, and the applicant was well aware of the death of Shri Rajan Pillai. In fact, the paper-book was also filed in the year 2006 and, therefore, it cannot be said that the Department was unaware of the death of Shri Rajan Pillai.

It is not disputed that Shri Manoj Pillai was not engaged by the Department, but his father Shri Rajan Pillai was engaged. In the application, it is the specific stand taken that Shri Rajan Pillai was Special Appointed Counsel and, therefore, he was under no obligation to appear and conduct the matter.

Keeping in view the factual position, I am of the view that a sufficient cause is made out for condonation of delay. Hence, the delay caused is condoned.

Both these civil applications stand disposed of.

Put up these matters on the applications for review and restoration, on 27-9-2019.

JUDGE