

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

913 WRIT PETITION NO.5040 OF 2020

**VITHOBA BALAJI PAWAR
VERSUS
MANIKRAO GANPATRAO PAWAR THROUGH LRS KISHANRAO MANIKRAO
PAWAR AND OTHERS**

...
Advocate for Petitioner : Mr. Gaikwad Anil M.
Advocate for Respondents : Mr. S.V. Kurundkar
...

CORAM : MANGESH S. PATIL, J.

DATE : 16.09.2020

PER COURT :

Heard both the sides. A decree passed in favour of the respondents by virtue of their counter claim, by the judgment and order dated 08.02.2001 still could not be got executed. The circumstances leading to this state of affairs can be summarized in following manner:

2. The petitioner being aggrieved and dissatisfied by the judgment and decree passed in the counter claim preferred by the respondent herein filed Regular Civil Appeal in the District Court at Nanded way back in the year 2001. Due to creation of separate Sub-division and a court of Additional District Judge at Kandhar the appeal was transferred from District Court Nanded to District Court Kandhar and was numbered as R.C.A. No.35/2003. The appeal was dismissed for want of prosecution on 04.08.2015. The petitioner seeking restoration of the appeal preferred Civil

Miscellaneous Application No.56/2005 along with an application for restoration. It is to be noted that in fact there was a delay of 15 days in filing of the application for restoration and by this Civil Miscellaneous Application he sought condonation of the delay. The learned Ad-hoc District Judge-1, Kandhar while allowing the application for condonation of delay subject to payment of cost of Rs.500/-, instead of directing the restoration application to be registered straight away directed the Regular Civil Appeal No.35/2003 to be readmitted. When the petitioner sought readmission of the appeal pursuant to this order, an objection was raised from some of the respondents that the appeal could not have been readmitted without giving an opportunity to them of being heard. It is in view of such an objection the learned Additional District Judge seems to have realized the mistake and now the petitioner filed Civil Miscellaneous Application No.37/2019 and requested for readmission of the appeal.

3. While hearing this application the respondent raised objection and the learned Additional District Judge directed notice to be issued to them since petitioner simultaneously was seeking stay to the execution.

4. Learned advocate Mr. Gaikwad submits that there was no fault on the part of the petitioner. The mistake was committed while passing the order on the application for condonation of delay. Instead of directing registration of the restoration application, the appeal itself was directed to readmitted and the mistake was perpetuated in the present scenario coming into being.

5. Learned advocate Mr. Kurundkar took me through the papers and pointed out as to how a decree for possession of barely 2 gunthas of land could not be executed for decades. On instructions he submits that instead of fighting out the litigation on sheer technicalities, his client i.e. the respondents have no objection if the appeal is restored to the original file and heard and decided finally within a stipulated time. The learned advocate Mr. Gaikwad submits that he has no objection if such a course is followed.

6. In view of above, the Writ Petition is allowed in following terms:

7. The learned Ad-hoc District Judge-1 Kandhar may take up the restoration application bearing Civil Miscellaneous Application No.37/2019 for emergent hearing. The respondent undertake to appear before the District Court, Kandhar by 30.09.2020. The learned District Judge shall pass the order restoring the appeal and thereafter shall decide the appeal finally on or before 31.12.2020. Till then the execution may proceed except actual delivery of possession.

(MANGESH S. PATIL, J.)