

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
CIVIL APPLICATION NO.612 OF 2019  
IN  
SECOND APPEAL NO.353 OF 1992  
ALONG WITH  
CIVIL APPLICATION NO.611 OF 2019  
IN  
SECOND APPEAL NO.224 OF 1992

Kutubuddin Kashim Shaikh  
(Since deceased) through his LRs .. Applicants

Vs.

Imamuddin Kashim Shaikh  
(Since deceased) through LRs & Ors. .. Respondents

...

Mr. Joel D'Souza i/b Mr. Prabhu Velar for the  
Applicants/Appellants.

None for the Respondents.

...

CORAM: SMT. BHARATI DANGRE, J.

DATED : 02<sup>nd</sup> MARCH, 2020.

**P.C:-**

1. Civil Application Nos.611 of 2019 and 612 of 2019 are taken out by the Applicants praying for re-calling of the Order dated 29/11/2018 whereby the Second Appeal Nos.224 of 1992 and 353 of 1992 are dismissed on the ground of non-prosecution. There is 68 days' delay in taking out the said Applications.

2. Heard learned counsel for the Applicants and perused the Applications. Paragraph Nos.3 to 5 of the Applications proceed to state that it is at the counsel's mistake that the matter could not be attended to, and immediately when the mistake committed was dawned upon, the learned counsel has taken out the present Applications for restoration.

3. It is settled position of law that a litigant cannot suffer for the counsel's mistake, particularly when it is *bona fide*. In such circumstances, the Applications deserve to be allowed and are allowed. The impugned order dated 29/11/2018 is set aside by condoning the delay.

4. Second Appeal Nos.224 of 1992 and 353 of 1992 are restored to file. Matters to be heard on 20/04/2020.

**[SMT. BHARATI DANGRE, J.]**