

pmw

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

**CIVIL APPLICATION NO.979 OF 2018
IN
REJECTED CASE NO.2571 OF 2016**

Mr. Udaykumar Sadashiv Jadhav and Ors. ... Applicant
Versus
Sou. Sonabai Babaso Patil ... Respondent

Mr. B.A. Lawate for the Applicant.
Mr. Bhooshan R. Mandlik i/b. Mr. S.S. Patwardhan for the Respondent
Nos.1 and 2.

**CORAM : SMT. SADHANA S. JADHAV, J.
DATE : 10th JANUARY 2020.**

P.C.:

1. This is an application seeking restoration of the second appeal to its original status. The appellant herein had filed an application seeking condonation of delay of 319 days in filing the second appeal. It is pertinent to note that Advocate Mr. Lawate was instructed by Advocate Mr. Deshmukh for appearing in application seeking condonation of delay. That by order dated 31st August 2016, application seeking condonation of delay was dismissed by this Court by observing as follows :-

“1.The matter was on board on 6th June, 2016 when none appeared for the applicants. The civil application is on board today for dismissal. None appeared for the applicants even today. The civil application is dismissed. No order as to costs.”

2 The present application seeking restoration is filed in the year 2018 i.e. practically after more than two years of dismissal of the second appeal. The reasons assigned in the restoration application are that initially Advocate Mr. Satish Deshmukh was appearing for the appellant and on one or two occasions Advocate Mr. Lawate had only mentioned the matters on his behalf. It is further submitted that after dismissal of the second appeal, Advocate Mr. Deshmukh requested Advocate Mr. Lawate to take over the matter and therefore, there is a delay in filing the application seeking restoration.

3 The learned counsel for the respondent vehemently submits that in fact the decree is passed in favour of the respondent in the year 2012. That there are concurrent findings by both the Courts. That the respondent Nos.10 and 13 had expired during the pendency of the first appeal however, the legal heirs of Respondent Nos.10 and 13 were not brought on record and it was being attempted to bring the legal heirs on record in the second appeal. Proper steps were not taken at any point of time and therefore, the decree passed in favour of the respondent has been defied for almost more than 8 years only because the Advocate has been negligent in prosecuting the matter. In any case, the appeal deserves to be

heard on merits as they would amount to final adjudication on merits and in view of this, the second appeal is restored to its original status.

4 The appellant deserves to be saddled with cost of Rs.25,000/- to be paid within two weeks. The cost be deposited for the cause of cancer patients and be remitted to Tata Memorial Centre (Hospital), Mumbai. The matter be listed on 27th January 2020. It is made clear that the second appeal would be finally heard at the stage of admission.

(SMT. SADHANA S. JADHAV, J.)