

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO.1563 OF 2019
WITH
CIVIL APPLICATION NO.1562 OF 2019
IN
CIVIL APPLICATION NO.330 OF 2016
IN
SECOND APPEAL (STAMP) NO.794 OF 2015

Mahadeo Narayan Naik .. Applicant

Vs.

Smt. Surekha Anant Mhatre
& Anr. .. Respondents

...

Mr. Indrajeet Kulkarni for the Applicant/Appellant.

None for the Respondent.

...

CORAM: SMT. BHARATI DANGRE, J.

DATED : 03rd MARCH, 2020.

P.C:-

1. At the outset, the learned counsel for the Applicant seeks leave to withdraw Civil Application No.1563 of 2019 since

according to him, this is nothing but a duplication of Civil Application No.1562 of 2019.

2. Permission, as prayed for, is granted.

3. Civil Application No.1563 of 2019 is dismissed as withdrawn.

4. Civil Application No.1562 of 2019 seeks restoration of the Second Appeal (Stamp) No.31520 of 2014 by condoning the delay of 357 days in filing the Application for restoration.

5. The lackadaisical approach of the Applicant is apparent. On 23/11/2016, there was no appearance on behalf of the Applicant. The Court on its own perused the averments in the Civil Application which was filed for setting aside the conditional order dated 09/03/2015.

6. Granting indulgence, the Court on its own, set aside the order dated 09/03/2015 and allowed the Civil Application subject to the condition that all office objections would be removed by the Applicant within a period of two weeks. The Court also made it clear that no further extension would be granted and, if all the office objections are not removed within two weeks, the Second Appeal will stand dismissed without reference to the

Court.

7. More than a year thereafter, on 04/12/2017, a circulation of the Second Appeal was sought unmindful of the fact that the Court has already granted its indulgence and restored the Appeal subject to removal of office objections. It is when the matter got circulated on 04/12/2017, it turned upon the Applicant that the Appeal was already dismissed. Then all the rush-rush and the present Application is filed seeking condonation of 357 days' delay.

8. Heard learned counsel for the Applicant. Perused the Application. The negligence cannot be attributed to the Applicant and the litigant should not suffer for the lapse on the part of his Advocate is the settled position of law. The Applicant, probably a resident of remote village in District Thane, is unaware of all these developments. It is only when the matter was circulated, it was revealed that for non-removal of office objections, the Second Appeal came to be dismissed without reference to the Court.

9. The Applicant should not suffer and, therefore, by condoning the delay in filing the Application for restoration for which the lapse of his counsel is cited as an excuse, the Application deserves to be allowed.

10. The Civil Application No.1562 of 2019 is allowed by condoning the delay.

11. The Second Appeal (Stamp) No.31520 of 2014 needs to be restored but with a caveat that this time, there will be no default on the part of the counsel in removing the office objections which are notified by the Registry. The Second Appeal (Stamp) No.31520 of 2014 is restored to the file subject to removal of office objections within two weeks.

12. For the two rounds of litigation and the indulgence which this Court has shown to the Applicant, the learned counsel for the Applicant would pay costs of Rs.5,000/- to the Legal Services Authority, within two weeks from today.

[SMT. BHARATI DANGRE, J.]