

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

907 CIVIL APPLICATION NO.2736 OF 2021
IN SA/842/2016

KAMLABAI POPAT DOMALE AND ANOTHER
VERSUS
SHAHABAI BAJIRAO DOMALE (WITNOR) AND OTHERS

...

Mr. V.R. Dhorde, Advocate for applicants

Mr. R.S. Kasar, Advocate for respondent Nos.1, 3 and 4 in SA

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CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 15th JULY, 2021.

PER COURT :

1 Present application has been filed for getting delay of 359 days condoned in filing civil application for restoration and recall of order dated 20.02.2019, passed by this Court and restoration of the Second Appeal as against the respondent Nos.2 and 5.

2 Heard learned Advocate Mr. V.R. Dhorde for the applicants and learned Advocate Mr. R.S. Kasar for respondent Nos.1, 3 and 4 in the Second Appeal. In order to cut short it can be said that they have argued in support of their respective contentions.

3 It can be seen that the notices were issued by this Court to all the respondents by order dated 11.12.2018. Thereafter, on 23.01.2019 the notices were awaited on 20.02.2019, when the matter was on board. The applicants-appellants were directed to take steps in respect of respondent Nos.2 and 5. It was a conditional order. It was directed that the steps should be taken on or before 06.03.2019 and in case of failure, it would be presumed that the appeal has stood dismissed, as against those respondents. It appears that no steps were taken by the appellants-applicants on or before 06.03.2019. Now, in view of the fact that the respondent No.5 had expired long back and the steps to be taken as against the respondent No.5 were to bring her legal representatives on record. A separate application has been filed and it has been allowed by imposing costs. Now, as regards respondent No.2 is concerned, the notice issued to respondent No.2 had returned unserved for want of detail address. Learned Advocate Mr. V.R. Dhorde for the applicants submits that the same address was before the Courts below, wherein the respondent No.2 had appeared. Even if, this is a fact, yet, appropriate steps were required from the applicants-appellants, that too, within the time prescribed by this Court. The applicants could have asked for re-issuance of the notice at the same address to respondent No.2, however, no such step was taken on or before 06.03.2019, has not been explained at all by the applicants-appellants. Still the statements are made that after the

restoration of the Second Appeal the appellants will try to search for the address. This is nothing but a step of protracting the matter. Further, the appellant could have also taken liberty from this Court to serve the respondent No.2 privately by permissible mode. In view of the conditional order that was passed and no steps were taken, it can be seen that the appeal stood dismissed as against respondent Nos.2 and 5. Now, the steps in respect of respondent No.5 have been taken. Now, also, a last chance to the appellants, by restoring the Second Appeal, can be given to take steps for serving the respondent No.2. Therefore, on this condition this Civil Application can be allowed. Hence, following order.

ORDER

1 Civil Application stands allowed.

2 The order passed by this Court on 20.02.2019, as a conditional order, stands recalled. In view of the fact that the steps are already taken against respondent No.5, no necessity to give any direction in respect of respondent No.5. However, as regards respondent No.2 is concerned, appellants-applicants to take steps on or before 06.08.2021.

3 In case of failure, once again, by the applicants-appellants to take steps as against respondent No.2 within the aforesaid date, the appeal

would stand dismissed against respondent No.2 automatically, without further reference to the Court.

4 If steps are taken prior to the said date, then issue notice to respondent No.2, to be made returnable on 06.08.2021. Humdast is allowed.

(Smt. Vibha Kankanwadi, J.)

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