

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

CIVIL APPLICATION NO.12543 OF 2019
IN
CIVIL APPLICATION NO.15686 OF 2011
IN
CIVIL APPLICATION NO.89/2004
IN
R.C.NO.1414/2015
in
SECOND APPEAL ST.NO.2668/1997

NAMDEO S/O DATTA (DIED) THROUGH L.RS.
1.RADHABAI W/O ANAMDEO VAIVAL AND ORS.

VS

MAHARASHTRA STATE CO-OPERATIVE LAND DEVELOPMENT
BANK THROUGH ITS LIQUIDATOR.

Mr.SP Katneshwarkar, Adv. For applicant/s;
Mr.SS Shinde, Adv. For Resp.no.1;
Mr.PH Sukale, Adv. h/for Mr. KJ Suryawanshi, Adv.
For Resp.No.2.

CORAM : SMT.VIBHA KANKANWADI,J.
DATE : 25th November, 2021

PER COURT :-

1. Present application has been filed for condoning delay of 1550 days caused in filing Civil Application for restoration of Second Appeal and re-calling of order passed by this Court on 8.4.2015.

2. This appears to a classic case on the point of delay as it can be seen that though memo of the appeal was filed in the year 1997; yet it is

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still on stamp number and till today, so many applications appear to have been filed for getting the delay condoned.

3. It is to be noted that registration of the Second Appeal st.No.2668/1997 was refused on 28.1.1998. Thereafter, it appears that CA No. 89/2004 was filed for condoning the delay and setting aside the order, refusing registration of the Second Appeal. That application came to be dismissed on 5.5.2008. Thereafter CA No.15686/2011 was filed for condonation of delay and restoration of CA No.89/2004. That application was dismissed as amount of Rs.5,000/- was not deposited as per order passed by this Court on 8.4.2015. Now, by this application the applicants are praying for re-call of that order together with condonation of delay of 1550 days caused in filing the application and also praying for restoration of the Second Appeal.

4. Heard learned Advocates appearing for the respective parties. In order to cut short it can be stated that both of them have made submissions in support of their respective contentions.

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5. The applicants have clearly stated that after the Second Appeal was filed, there were office objections raised and since they were not removed, registration of the Second Appeal stood refused by order passed by the Additional Registrar (Judicial) on 28.1.1998. The application that was filed, bearing CA No.15686/2011, for restoration of the appeal was, in fact, allowed by this Court by imposing costs of Rs.5,000/-, to be paid within a period of four weeks. The applicants contend that the Advocate had informed them about the said order, however, since they are labourers and shifted to different places for their work, they could not get communication from the Advocate and after getting knowledge of the order passed by the Court, they had tried their level best to collect amount and, therefore, there is delay. The said delay is unintentional as per the contention of the applicants.

6. Interesting point to be noted is that, as earlier stated, though the Second Appeal was filed in the year 1997, it appears to have not been prosecuted properly and the applicants never took

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proper interest in prosecuting the same. There was delay in getting the order, passed by the learned Registrar (Judicial), set aside and also restoration. At that time, it was 1290 days when CA No.15686/2011 was filed to restore the CA No. 89/2004, which was dismissed in default. Same reasons cannot be heard again and again. If the applicants would have been contesting the matter properly, they could have made arrangements and would have kept contact with the advocate all the times. They say that due to labour work, they had shifted to other places. However, the details of those shifting have not been given and, therefore, such bare statement, that too without any proof, cannot be accepted now. It appears that such a statement was accepted earlier by this Court and by imposing costs that application was allowed. In fact, sufficient time of four weeks was granted by this Court for depositing the amount; yet that has not been deposited. Now, the application is very casually drafted without giving any details about the places as to where the applicants were during the period of 1550 days.

7. When again and again same mistake is committed, i.e. delay is caused, then it amounts to negligence and the Courts cannot protect a negligent litigant.

8. The applicants are contending that father of applicant Nos.2 to 5 had borrowed loan from Respondent No.1-Bank to the tune of Rs.6,000/- and charge was created on the suit land. The suit land was auctioned by the Bank and Respondent No.2 purchased the same. According to them, the outstanding amount of the loan on the date of the auction sale was Rs.2,400/-. They contend that the auction was made without following due procedure. It is now stated that Respondent No.1-Bank has gone into liquidation. Thus, it is to be noted that the balance amount was Rs.2,400/- for which the Second Appeal is filed in the year 1997 and it is still tried to be contested. The suit was filed in the year 1986 and was decided on 29.1.1985. The Civil Appeal was decided by the first Appellate Court on 25.10.1996 and now when the cost was imposed on 8.4.2015 to the tune of Rs.5,000/-, it is also not paid. This shows that the applicants are totally

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negligent and, therefore, with this kind of history, they do not deserve any kind of leniency, which could have been normally shown, if reasonable and sufficient grounds would have been shown. The application, therefore, stands rejected.

(SMT. VIBHA KANKANWADI)
JUDGE

BDV