

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO.9961 OF 2021
IN SA/262/1994

BABASAHEB S/O TATYABA BAHIR AND OTHERS
VERSUS
MANGESHRAO S/O RAMESHWARRAO TENDULKAR AND OTHERS

...
Mr. Kuldip S. Patil h/f Mr. S. S. Choudhary, Advocate for applicants.
Mr. V. D. Salunke, Advocate for respondent No.1.

...

CORAM : SMT. VIBHA KANKANWADI, J.

DATE : 23.09.2021

ORDER :-

. Present application has been filed for condoning the delay of 8455 days in filing civil application for setting aside the order dated 22.09.1998 passed by the learned Registrar of this Court dismissing the second appeal against original respondent Nos.3, 4, 8, 9, 10, 11 and 13.

2. Heard both sides.

3. It can be seen that the second appeal was filed in the year 1994 and this Court admitted the second appeal on 27.06.1996. Since then it is pending for final hearing. Notices were issued regarding final hearing i.e. after admission to the respondents and the notices of respondent Nos.3, 4, 8, 9, 10, 11 and 13 were returned unserved with remark that they are not found on the given address. The second appeal was listed

before the learned Registrar's Court as per rules on 01.08.1998. It is contended that inadvertently the Advocate for the applicant did not notice that the matter was on board of Registrar. It is said that the matter went unattended and the learned Registrar has dismissed the second appeal on 01.08.1998 against the abovesaid respondents. It is then contended that now the parties have arrived at compromise and wanted to place the compromise on record and when the record is searched, they found that the second appeal is already dismissed as against respondent Nos.3, 4, 8, 9, 10, 11 and 13, hence, this application.

4. At the outset, the reason that has been given is absolutely not convincing. After 01.08.1998, on several occasions the matter was on board and it could be gathered from the farad sheet that at least it was on board on 26.09.2011, 09.03.2012 and prior to that on 24.01.2003. Therefore, it is not convincing that till recently the fact was not known to the learned Advocate for the applicants that the second appeal has been dismissed as against the aforesaid respondents.

5. Now, the position is that the parties have arrived at the compromise and, therefore, there is no hurdle in allowing this application, however, for such lethargic attitude, definitely, cost will have to be imposed.

6. Application stands allowed in terms of prayer clause 'B', subject to deposit of cost of Rs.50,000/- to be paid to the High Court Legal Services Authority, Sub Committee, Aurangabad within a period of 15 days from today.

[SMT. VIBHA KANKANWADI, J.]

scm