

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
INTERIM APPLICATION NO.2751 OF 2021
IN
CIVIL APPLICATION NO.1078 OF 2010
IN
FIRST APPEAL (ST) NO.6815 OF 2010

Prem Singh Fauza Singh .. Applicant

In the matter Between :-

Prem Singh Fauza Singh .. Appellant

Versus

Rajani Dharampal Sharma & Ors. .. Respondents

...

Mr.Ashok Kumar Mishra for the Applicant/Appellant.

...

CORAM: BHARATI DANGRE, J.
DATED : 06th OCTOBER, 2021

P.C:-

1. By the present application, restoration of the Civil Application No.1078 of 2010 filed in the First Appeal (St) No.6815 of 2010 is sought.

2. On 17/02/2011, the following order was passed on Civil Application :-

“1. Rule, returnable on 20th April, 2011.

2. In addition to service of notice through court, advocate for the applicant shall serve private notice by Registered Post A.D. and/or by courier service and/or by hand delivery to the Respondent and shall file affidavit of service one week before the returnable date failing which the Application will stand dismissed for non prosecution.”

3. Consequently, the application stood dismissed for non prosecution in terms of the order. The Applicant, after lapse of 10 years 90 days approached this Court, seeking setting aside the said order and restoration of the Civil Application and also prayed that the delay caused in bringing the interim application be condoned.

4. Heard learned counsel for the Applicant and perused the Application. The only justification which is sought to be offered is to be found in para 5 of the Application wherein it is stated that the Applicant came to know on 20/03/2021 that his Advocate expired on 13/12/2019 and, thereafter, he attempted to contact the family members of his Advocate, but as they had shifted their residence, it took time in establishing the contact. It is only on 25/03/2021, he was able to establish the contact with the son of his Advocate and was able to procure the death certificate.

Perusal of the Application would reveal that no explanation has been offered, for the period commencing from the date of the passing of the order i.e. 17/02/2011 till

20/03/2021 when the Applicant gained knowledge about demise of his Advocate. Though the counsel is informed to have expired in the year 2019, the Applicant was not diligent in prosecuting the Appeal since 2011 to 2019 when the counsel was alive. Not a single averment is contained the application to the effect that the Applicant ever contacted his counsel and complied with the order dated 17/02/2011.

The Applicant, who is not diligent in prosecuting his remedy, does not offer any satisfactory explanation, when he say that such inordinate delay be condoned. He is not entitled for condonation of delay, as delay is of more than a decade and becomes fatal. Necessarily, the Application deserves a rejection and is rejected.

(SMT. BHARATI DANGRE, J.)