

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 990 OF 2019
(FOR RESTORATION)

IN

CIVIL APPLICATION NO. 2987 OF 2014

IN

FIRST APPEAL (ST) NO. 34644 OF 2013
(REJECTED CASE NO.421 OF 2020)

Union Of India Throught the Secretary
Ministry Of Finance ...Applicant

IN THE MATTER OF :-

Union Of India Throught the Secretary
Ministry Of Finance ...Appellant

Versus

Smt. Laxmiben Wd/o Morarji Dedhia & Ors. ...Respondents

AND

INTERIM APPLICATION NO. 992 OF 2019

IN

CIVIL APPLICATION NO. 2988 OF 2014

IN

FIRST APPEAL (ST) NO. 34644 OF 2013
(REJECTED CASE NO.421 OF 2020)

Union Of India Throught the Secretary
Ministry Of Finance ...Applicant

IN THE MATTER OF :-

Union Of India Throught the Secretary
Ministry Of Finance ...Appellant

Versus

Smt. Laxmiben Wd/o Morarji Dedhia & Ors. ...Respondents

Mr. Jitendra b. Mishra A/W Mr. Dhananjay B. Deshmukh, for the
Appellant/Applicant in I.A.

Mr. Ketan Parekh i/by Mr. K. R. Parekh & Co. for Respondents.

CORAM : N. J. JAMADAR, J.

DATE : 3rd DECEMBER, 2021.

P.C.:

INTERIM APPLICATION NO. 990 OF 2019

1. Heard the learned counsel for the applicant.
2. This application is preferred to recall the order dated 16th August, 2019 passed in Civil Application No.2987 of 2014 in Fast Appeal (St.) No.34644 of 2013, whereby the said application came to be dismissed for non prosecution and resultantly the appeal itself came to be rejected, and to restore the said Civil Application No.2987 of 2014 to file.
3. In the application, it is averred that, initially the appeal was filed along with application for condonation of delay being Civil Application No.2987 of 2014 by Panel Counsel Shri. S.D. Bhosale, who expired in the year 2015 and, thus, the applicant could not keep track of the matter and, resultantly, the application came to be dismissed. The applicant has a strong case on merits and if the

order is not recalled, the applicant would suffer irreparable loss.

4. The respondents have resisted the application by filing an Affidavit-in-reply. The ground raised in the application about death of the counsel and consequent failure to keep track of the proceeding is stated to be unacceptable, especially, in the light of the fact that the application came to be dismissed in the year 2019.

5. The learned counsel for the respondent would urge that, there is no explanation for the period which elapsed in between the death of the counsel and the dismissal of the application.

6. In the application, the applicant has ascribed the principle reason of the death of the counsel. The said fact could not be contested. It is true that there is an element of delay and indolence on the part of the applicant in not pursuing the matter, in the intervening period. However, this application for restoration came to be filed within a period of one month of the order dated 16th August, 2019, whereby the application came to be dismissed for want of prosecution.

7. In these circumstances and to advance the cause of substantive justice, the application to recall the order of dismissal and restore Civil Application No.2987 of 2014 deserves to be allowed.

8. The delay and inconvenience caused to the respondents

can be taken care of by awarding appropriate costs. Hence, the following order :

ORDER

1] The application stands allowed in terms of prayer clause (a).

2] The order dated 16th August, 2019 in Civil Application No.2987 of 2014 stands recalled, subject to payment of costs of Rs.5000/- by the applicant to the respondent within a period of four weeks.

3] The payment of costs shall be condition precedent for restoration of the application.

4] In view of disposal of Interim Application No. 990 of 2019, Interim Application No.992 of 2019 also stand allowed and Civil Application No. 2988 of 2014 stands restored to file.

CIVIL APPLICATION NOs. 2987 OF 2014 AND 2988 OF 2014

1. The learned counsel for the applicant undertakes to serve copies of the applications and appeal memo on the counsel for the respondent, within a period of one week.

2. The respondents are at liberty to file an Affidavit-in-reply within a period of two weeks thereafter.

3. The Civil Application Nos. 2987 of 2014 and 2988 of 2014 be listed for hearing on 11th January, 2022.

(N. J. JAMADAR, J.)