

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMPANY APPLICATION NO.1 OF 2021
IN
COMPANY APPEAL NO.102 OF 2015
IN
COMPANY PETITION NO.121 OF 2013**

K. C. Agro Pvt Ltd.

....Applicant
(Original Respondent No.1)

In the matter between

K. C. Agro Pvt Ltd. & Anr

....Appellants

V/s.

Girdharilal Dalal & Ors

....Respondents

**WITH
COMPANY APPLICATION (L) NO.4 OF 2019
IN
COMPANY APPLICATION NO.1 OF 2021
WITH
INTERIM APPLICATION (L) No.10894 OF 2021
IN
COMPANY APPLICATION NO.1 OF 2021
WITH
INTERIM APPLICATION (L) NO.10957 OF 2021
IN
COMPANY APPEAL NO.102 OF 2015**

Mr. Kevic Setalvad, Senior Advocate a/w. Mr. Malcolm Siganporia, Mr. Hormuz Mehta and Mr. Ahsan Allana i/b. J. Sagar Associates for appellant/applicant.

Mr. Shanay Shah a/w. Ms. Monisha Mane i/b. Parinam Law for respondent no. 3.

Mr. Haresh Jagtiani, Senior Advocate a/w. Ms. Vandana Mehta and Mr. Yashpal Jain i/b. Yashpal Jain for applicant in CAAL/4/2019/Interventor.

**CORAM : K.R.SHRIRAM, J.
DATED : 3rd MAY 2021**

P.C. :

INTERIM APPLICATION (L) NO.10894 OF 2021

1 Heard Mr. Setalvad and also considered the application. For the reasons mentioned in the application, particularly in paragraph 10 and the grounds mentioned in paragraph 13, interim application is allowed in terms of prayer clause (a) and accordingly disposed. Amendment to be carried out within one week from today. Wherever the hand written corrections are made, Ms Jyoti Dalal should come to the court and initial those paragraphs, within one week from today.

2 At the same time, in view of the present situation, I would proceed to hear the restoration application being Company Application No.1 of 2021 before the amendment is also carried out.

COMPANY APPLICATION NO.1 OF 2021

3 This is an application for restoration of company appeal that came to be dismissed by a self operative order dated 11th January 2018. Though a detailed background in the application has been given for the various orders passed, the crux of the application is found in paragraphs 26 and 28 of the application by which, applicant is seeking : a) extension for taking steps to bring the legal heirs of respondent no.1 on record and (b) consequently recall of the dismissal of the appeal by the self operative order.

4 Applicant states that the lawyers have advised him to state that it was an error on part of the lawyers that the appeal came to be dismissed. It is the same set of lawyers, who are now appearing for applicant and that is why, I am not seeking an explanation from the lawyers. No court would

want a litigant to suffer due to an error by their advocates and here is an advocate, who has been candid and honest to the court as well as to its clients that it was their mistake which resulted in the appeal getting dismissed. I would, therefore, accept the explanation and (a) extend the time to take steps to bring the legal heirs of respondent no.1 on record and ((b) consequently restore the appeal.

5 Time to take steps to restore Company Application (L) No.3 of 2017, as mentioned in the order dated 11th January 2018, is extended upto and including 10th June 2021.

6 I have to note that Mr. Jagtiani appeared on behalf of one Chetan Dalal, who has filed an intervention application bearing Company Application (L) No.4 of 2019 in the present Company Application No.1 of 2021. Mr. Jagtiani submitted that affidavit in support of this application contained all lies and the court was being misled into passing the order. In my view, restoration application is between applicant and the court and the court is entitled to exercise its discretion. No third party can have a say in that. At the same time, if, Mr. Jagtiani's client wishes to take out an intervention application in the appeal, they may do so, if so advised, and he may raise all points in the application including his client's allegations that the affidavit in support to Company Application No.1 of 2021 contained all lies and seek dismissal of the appeal and the court will consider that application on its own merits including Mr. Setlvad's contentions whether any third party can intervene in an appeal filed under Section 10F of

Companies Act, 1956..

7 Company Application No.1 of 2021 accordingly stands disposed.

COMPANY APPLICATION (L) NO.4 OF 2019

8 In view of the above, Company Application (L) No.4 of 2019 taken out by Chetan Dalal also stands disposed with liberty to take out such intervention application, if so advised as mentioned above.

(K.R. SHRIRAM, J.)