

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION (CAO) NO.1826 OF 2019
AND
MISC. CIVIL APPLICATION (ST) NO. 17316 OF 2019
IN
FIRST APPEAL NO.162 OF 2003(D)

(DATTATRAYA KISANRAO PAIKRAO....VS.. GANESH NARAYAN THAKRE & ANR.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri Gopal Mishra, Advocate for Applicant/Appellant.
Shri J.S.Wankhede, Advocate for Respondent No.1.
Shri H.V.Thakur, Advocate for Respondent No.2.

CORAM : ANIL S. KILOR, J.
DATED : OCTOBER 28, 2021.

Heard.

2. This is an application for condonation of a delay in filing restoration application. There is delay of 4609 days in filing application for restoration of First Appeal No. 162 of 2003.

3. Shri Gopal Mishra, learned counsel for the applicant submits that on 31/03/2003 First Appeal came to be admitted and thereafter it was listed on 13/10/2006 when this Court granted 8 weeks' time to file private paper book by passing conditional order and because of non-filing of the paper book within the stipulated period the appeal came to be dismissed on 08/12/2006. It is submitted that though the paper book was ready it was not inadvertently filed within the

stipulated period. However, when the inquiry was made in the Registry in July 2019 about the status of the appeal, it was revealed that because of conditional order the appeal was dismissed long back in the month of December 2006 and therefore, the application for restoration was filed. However, because there was delay, the present application has been filed.

4. Shri Mishra, learned counsel for the applicant submits that the delay has been properly explained by the applicant and it is due to inadvertence on the part of the Advocate, paper book was not filed within the stipulated period, but because of conditional order the appeal was dismissed. It is submitted that client should not be suffered for the mistake of the counsel and therefore it is prayed for considering the explanation given in the application, delay caused in filing the application for restoration may be condoned, in the interest of justice.

5. On the other hand, Shri Thakur, learned counsel appearing for the respondent No.2 and Shri Wankhede, learned counsel appearing for the respondent No.1 strongly opposed the application and submit that the counsel ought to have been diligent in this matter when the conditional order was passed. By arguing so, both the learned counsel pray for dismissal of the application.

6. I have considered the contentions of the both the parties. It appears from the explanation that the

Advocate for the applicant inadvertently did not file the paper book within the stipulated period as per the order dated 13/10/2006 and therefore, the appeal was dismissed. It is settled law that the client should not suffer for the mistake of the lawyer and therefore, I am of the opinion that this is a fit case to adopt liberal approach while considering the application for condonation of delay. Hence, I pass the following order.

The Civil Application is **allowed** in terms of prayer clause of the application.

In view of above, Misc. Civil Application Stamp No. 17316 of 2019 is **allowed** in terms of its prayer clause.

JUDGE

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