

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

906 CIVIL APPLICATION NO.7770 OF 2010
IN SA/149/1990

INTEJAMI COMMITTEE THRO.CHAIRMAN.
VERSUS
SHAHANUDDIN SARDARUDDIN and ANOTHER.

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Advocate for Applicant : Fatima Kazi h/f Mr. S.S. Kazi.
Advocate for Respondent No. 1C : Mr. S.U. Shaikh h/f Mr. Taufeeque
Ahmed.

CORAM : MANGESH S. PATIL, J.
DATE : 10.03.2022.

PER COURT :

This is an application for restoration of the second appeal which was dismissed in default by the order dated 17.06.2009, with a prayer to condone a delay of 269 days in seeking restoration.

2. I have heard learned advocates Ms. Kazi h/f Mr. S.S. Kazi for the applicant/appellant.

3. Learned advocate Mr. Shaikh h/f Mr. Taufeeque Ahmed for respondent No. 1C submits that he has strong objection and the delay has not been properly explained.

4. The other respondents have been served but none is present for them.

5. It is to be borne in mind that the second appeal was admitted in the year 1991 and was awaiting final hearing. As has been laid down in the matter of **Perumon Bhagvathy Devaswom .vs. Bhargavi Amma (Dead) Through L.Rs.; 2008 (8) Supreme Court Cases 321**, in such kind of matters where the matters are awaiting hearing for years together, parties invariably rely upon their advocates and wait for their turn to arrive. The approach of

the Courts in such matters, therefore, has to be not identical to the one it usually takes while considering the applications for condonation of delay in filing the main proceeding.

6. As can be seen from the contents of the application and the papers, apart from the fact that the respondents have not controverted the facts averred therein, the applicant has specifically mentioned as to how it was relying upon its advocate to communicate the date of hearing. It has also been mentioned in detail as to how the wife of the learned advocate who was representing it Mr. K.G Khadar was ill and had to be taken to Ruby Clinic at Pune and thereafter to Poona Hospital and Research Centre and thereafter she was operated on 17.06.2009. During that period Mr. Khadar had applied for leave and was absent because of his personal difficulty. The delay does not seem to be either deliberate or intentional.

7. Considering all the aforementioned facts coupled with fact that there is no demur, since the dispute pertains to right to an immovable property, the application is allowed. The delay is condoned and the second appeal is restored.

8. After such restoration, issue notices to the respondents, returnable on 21.04.2022.

(MANGESH S. PATIL, J.)

mkd/-