

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

**CIVIL APPLICATION NO.13063 OF 2019
IN SA/743/2011**

**SAHEBRAO VENKATRAO BHOSALE
VERSUS
ANANTRAO VENKATRAO BHOSALE DIED LRS. GUNDU ANANDRAO PATIL
AND OTHERS**

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Advocate for Applicant : Mr. Mahendra B. Kolpe
Advocate for Respondents : Mr. B. R. Survase
. . .

CORAM : BHARAT P. DESHPANDE, J.

DATED : 19th AUGUST 2022

PER COURT :

Leave to amend to add Smt. Sushila Anandrao Bhosale as respondent no.5 in present application being one of the legal heir of deceased Anandrao Bhosale.

2. Amendment to be carried out forthwith.
3. Learned counsel for respondents waives notice on behalf of added respondent no.5.
4. This is an application for condonation of delay of 535 days and restoration of Second Appeal No. 743 of 2011, which was dismissed on 2nd August 2017 for not submitting private paper-book as per the conditional order passed by this Court on the same date.

5. Learned counsel for applicant submits that earlier advocate appearing for the appellant left the practice and therefore the applicant had to reconstruct entire file which took time and therefore he was unable to file application for restoration within time.

6. Learned counsel for applicant submits that he is ready and willing to produce the paper-book within two weeks, if the Second Appeal is restored.

7. Learned counsel for respondents filed affidavit-in-reply opposing the application on the ground that the applicant is deliberately delaying the proceedings and one another matter filed between the parties, he is appearing and aware about the proceedings.

8. The order dated 2nd August 2017 is the conditional order wherein Second Appeal was admitted on substantial question of law during hearing. Further, the appellant was directed to file private paper-book within six months, failing which the appeal shall stand dismissed within reference to the Court.

9. The office endorsement shows that the appellant failed to submit paper-book within time and therefore appeal was dismissed for non submission of paper-book.

10. Since the appeal was admitted on substantial question of law as recorded in the order dated 2nd August 2017 and that the appellant is now ready to furnish the paper-book within two weeks, opportunity required to be given to him, so as to argue the matter on merits.

11. Learned counsel for respondents submits that sole respondent shown in Second Appeal by Anandrao S/o Venkatrao Bhosale, who expired and therefore appeal stands abated.

12. Learned counsel for applicant submits that he has already included legal heirs of deceased Anandrao in present application and ready and willing to file application for bringing legal heirs on record in Second appeal, if it is restored.

13. Considering the above submissions and the grounds mentioned in the application which are sufficient to condone the delay and to recall the order of dismissal of Second Appeal, I pass following order:-

ORDER

- (i) The application stands allowed.
- (ii) The delay in filing the present application stands condoned.
- (iii) The order of dismissal of Second Appeal No. 743 of 2011 is hereby recalled.
- (iv) The Second Appeal is restored to the file of this Court.
- (v) Appellant shall furnish the paper-book within a period of two weeks from today.
- (vi) Only after submission of the paper-book, call for record and proceedings from the trial court.

(BHARAT P. DESHPANDE, J.)