

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

**CIVIL APPLICATION NO.4465 OF 2019
IN SA/689/2015**

**ABA ANNASAHEB SADHYE AND OTHERS
VERSUS
JIJABAI FAKIRRAO ADHAV AND ANOTHER**

...
Advocate for Applicants : Mr. Chandrakant R. Thorat
Advocate for Respondent Nos.1 and 2 : Smt. P. V. Langhe
...

CORAM : BHARAT P. DESHPANDE, J.

DATED : 19th AUGUST 2022

PER COURT :

This is an application for restoration of Second Appeal No. 689 of 2015 and also condonation of delay of 172 days in filing restoration application.

2. Heard learned counsel Mr. Thorat for applicants and Smt. Langhe for respondent Nos.1 and 2.

3. Learned counsel for applicants submits that Second Appeal was filed in the year 2015 and notices were issued. However, due to some objections raised by the Office, the matter remained pending.

4. The applicants failed to remove office objections and therefore matter was dismissed vide order dated 20th February 2018.

5. He submits that there are no intentional or deliberate attempt on the part of the applicants for not removing office objections within stipulated time and it was due to some miscommunication. He submits that applicants are having good case on merits in the Second Appeal and therefore, an opportunity be given to him to argue the Second Appeal.

6. Learned counsel for respondent Nos.1 and 2 strongly objected on the ground that the applicant is deliberately delaying the matter as there are concurrent findings of both the courts in favour of the respondents. While considering the Second Appeal, this Court has passed conditional order of stay and taking advantage of such stay order, the applicant deliberately delayed the Second Appeal and failed to argue the matter for admission.

7. Considering the above submissions and the fact that the Second appeal was dismissed for want of removing objections and in the interest of justice, the applicant be given an opportunity to argue the matter on merit, subject to payment of costs of Rs.10,000/- (Rupees Ten Thousand Only) to be paid within a period of two weeks. The costs shall be paid to the respondents. Hence the order :-

ORDER

- (i) The applications stands allowed.
- (ii) The delay 172 days in filing present application is condoned.

- (iii) The Second Appeal No. 689 of 2015 along with Civil Application in it are restored, subject to payment of cost of Rs.10,000/- to the respondents within a period of two weeks from today.
- (iv) If the cost is paid within time, the Second Appeal shall be placed for admission on 22nd September 2022.
- (v) Leave is granted to the applicants to amend the address of respondent No.2 in Second Appeal.
- (vi) Learned counsel for respondents waives notice on behalf of respondent Nos.1 and 2 in Second Appeal.

(BHARAT P. DESHPANDE, J.)