

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**CIVIL APPLICATION NO. 31 OF 2022**  
**IN**  
**SECOND APPEAL NO. 3 OF 2013**

Krishna Dadu Udale, decd thru LRs      .. Applicant  
Baburao Krishna Udale

Versus

Bali Sadu Shelar, decd, thru LRs      .. Respondent  
Smt.Banabai Bali Shelar

...

Mr. Prashant R. Suryawanshi i/b Gajanan M. Savagave for the applicant.

Mr.Rahul P. Kasbekar i/b Surel Shah for respondent nos.1 to 3.

**CORAM: BHARATI DANGRE, J.**

**DATED : 28<sup>th</sup> MARCH, 2022**

**P.C:-**

1            By the present application, the Second Appeal which was dismissed in default on 12/7/2017 is sought to be restored.

2            Heard learned counsel for the applicant and the counsel for respondent nos.1 to 3.

3            Perused the application which seek restoration of the Appeal. The application disclose that on 12/7/2017, the Second Appeal was taken on board and was called in the morning session and the Advocate was directed to remain present in the post-

lunch session. Post lunch, when the matter was called out, by a detail order dated 12/7/2017, the Second Appeal came to be dismissed for want of prosecution.

The order clearly reveal the lackadaisical approach adopted by the appellants, since it is noted that the Appeal was filed in the year 2012 and on non-removal of office objections which was dismissed on 25/6/2012. On request, it was restored on 26/11/2012 with a direction to remove the office objection within a period of two weeks. The time was extended on 25/11/2013 by passing a conditional order. Once again, there was a failure to remove the office objection resulting in dismissal of the Second Appeal, on the second occasion, on 6/2/2014. An Application for restoration was taken out and the Appeal was restored. On an urgency being expressed, the Appeal was taken up on Board and ad-interim relief was granted, which was continued from time to time. On 14/9/2016, the Court was required to adjourn the matter on 28/9/2016 as a last chance by commenting upon the conduct of the appellant, particularly by noting that the Appeal is pending for five years and dismissed on two occasions for non-removal of office objections.

4           Recording the aforesaid, the Appeal came to be dismissed on 12/7/2017.

5 By the present application, it's restoration is sought by taking out an application on 31/7/2017, but no steps were taken to circulate the same. Perusal of the application again reflect the casual approach, when a justification is offered in paragraph nos.3 and 4, about the absence of the lawyer on 12/7/2017. Assuming it to be true that the Advocate was unable to attend the Court on the said date since he was not keeping well, it is not only this date which has resulted in the order dated 12/7/2017 since this Court has recorded the past conduct of the applicant and lack of diligent in prosecuting the Appeal. Hence, though I am convinced to restore the Appeal to its file and since a party cannot be made to suffer on account of a reason which is personal to the lawyer representing him, however, the approach of the appellant compel me to grant the restoration subject to payment of costs of Rs.20,000/- to the Bar Library.

The amount shall be deposited within a period of two weeks. The receipt shall be produced before the Registrar, upon which the Second Appeal shall stand restored to it's file.

Let the Appeal be listed for admission on 7/6/2022.

( SMT. BHARATI DANGRE, J.)