

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.1074 OF 2022

IN

SECOND APPEAL NO.335 OF 1987

HUSEN ABBAS SHAIKH (since deceased))
YASEEN HUSEN SHAIKH)...APPLICANT

V/s.

ABBAS AMIN SHAIKH AND OTHERS)...RESPONDENTS

Mr.Ashutosh Gavnekar i/by. Mr.Chetan Alai, Advocate for the Applicant.

Ms.Shraddha Pawar i/by. Mr.Dilip Bodake, Advocate for the Respondent.

CORAM : BHARATI DANGRE, J.

DATE : 11th APRIL 2022

P.C. :

1 By the present application, delay of 9 years 99 days is
sought to be condoned, in seeking restoration of the appeal which
came to be dismissed due to non-removal of office objections in
terms of the order passed by this Court on 24th August 2012. In

furtherance of the said order, since the advocate for the applicant did not remove the office objections within the stipulated time, the second appeal stood dismissed on 13th September 2012.

2 The restoration is now sought of the said appeal by preferring an application in the year 2022 and to be precise on 21st January 2022.

3 Heard the learned counsel for the applicant and perused the application.

4 The reason for the delay of 9 years 99 days is contained in paragraphs 2 and 3 which reads thus :

“2 The applicant further states that as Mr. G.R. Rege, Advocate was appearing on behalf of appellants from the year 1987 and thereafter till dismissal of the second appeal. The applicant states that as from the year 2010, the Advocate Mr. G.R. Rege, was not keeping well and he was not attending the court proceeding in regular terms.”

“3 The applicant further states that as they were lay man towards the court procedure and therefore whenever they contacted Advocate Mr. G.R. Rege,

he was giving assurance for handling the said matter. Thereafter years together left and they came to know that Advocate Mr. G.R. Rege, had an sad demise on 23/03/2016, therefore whey they came to know in the year 2021, they immediately contacted in the High Court department and they found that there matter has been dismissed on 24/08/2012, by order of Justice Mrs. Mridula Bhatkar. It was further revealed that on some occasion Advocate Mr. S.M.Railkar, has been appeared on behalf of the appellants. Hereto annexed and marked at **Exhibit "B"** is the copy of Order dated 24/08/2012."

5 In the wake of the aforesaid pleading, it is prayed that the parties shall not be made to suffer for non-attendance of their advocate and an opportunity should be given to prosecute the proceedings on merits rather than throwing the appeal on the ground of technicalities.

6 It is a trite position of law that delay deserves to be condoned only when sufficient reasons are given. For a delay spread over for 9 years the entire blame is being put on the advocate by stating that he was to handle the matter and the news about his demise in the year 2016, which the applicant

came to know only in the year 2021. Though the party should not suffer for the mistake of the advocate but at the same time, it is expected that the party should also adopt some due diligence since he is the one who is seeking justice and the advocate assisted him in securing justice. It appears that the applicant woke up from deep slumber only in the year 2021 and has attributed the fault to the learned counsel who unfortunately passed away and cannot be confronted with the factual scenario.

7 The delay being not sufficiently explained and not found to be justifiable, do not deserve to be condoned.

As a consequence, the application is dismissed.

(SMT. BHARATI DANGRE, J.)