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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5017 OF 2016

Nathalal G.Thakkar
(since deceased through Lrs.
Hasumati N. Thakkar and ors. ...Petitioners.
V/s.
Maharashtra State Electricity
Distribution Company and ors. ...Respondents.

Mr. Mandar Limaye for the Petitioners
Ms Anjali R. Shiledar - Baxi for Respondent Nos.1 to 4.

CORAM : N.R. BORKAR, J.
DATE : 21.01.2022.

P.C. :

1. This petition takes an exception to the order dated 4.1.2016 passed by the District Judge-3, Thane in Civil Miscellaneous Application No. 315 of 2015.
2. The petitioners are the legal representatives of the original plaintiff Nathalal Thakkar, who had filed Special Civil Suit No.284 of 2001 against the present respondents. The said suit was dismissed. Being aggrieved by the judgment and order of the trial Court, the original plaintiff filed the first appeal before this Court. However, due to enhancement of pecuniary jurisdiction of the District Court, in the year 2012 the said appeal was transferred to

the District Court, Thane. The appeal was, thereafter re-numbered as Civil Appeal No. 304 of 2012. After transfer, notice was issued to the original plaintiff. The notice was returned unserved as original plaintiff was not found on the address mentioned in memo of appeal. The appeal was, thus dismissed for want of prosecution on 25.9.2014. In the meantime, the original plaintiff died on 23.3.2014. The petitioners herein who are legal representatives of the original plaintiff filed the application for restoration of appeal along with an application for condonation of delay. The learned appellate Court rejected the said application by the order impugned.

3. I have heard the learned counsel for the petitioners and the learned counsel for the respondents.

4. The fact that initially appeal was filed before this Court and it was transferred to the District Court in the year 2012 is not in dispute. The petitioners, in their application for condonation of delay, have stated that after transfer of the appeal to the District Court they never received any notice from the said Court. It is further stated that the original plaintiff Nathalal Thakkar expired

on 23.3.2014. Thereafter, they made enquiry about the status of appeal and they were told that they would get notice of hearing of the said appeal. They have stated that as they did not get notice for considerable time, again they made enquiry in the month of September 2015 and at that time they were informed that their appeal has been dismissed for want of prosecution.

5. I have perused the order impugned. According to the appellate Court, the notice of hearing was issued to the original plaintiff. As he was not found on the address mentioned in appeal memo, no fault can be found with the order of dismissal of appeal for want of prosecution. The approach of the appellate Court is wholly erroneous.

6. Considering the facts and circumstances of the case, the appellate Court ought to have allowed the application for condonation of delay. The order impugned therefore, cannot be sustained. In the result, following order is passed.

ORDER

a. Writ Petition is allowed.

b. The order impugned is set aside. The delay in filing application for restoration of appeal is condoned.

c. The parties shall appear before the appellate Court on 15.2.2022.

[N.R.BORKAR, J.]