

Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 206 OF 2022
IN
REJECTED CASE NO. 2573 OF 2017
WITH
CIVIL APPLICATION NO. 207 OF 2022
IN
REJECTED CASE NO. 2573 OF 2017

Panchabhai Veera Uka & Ors	...Applicants
<i>In the matter between</i>	
Panchabhai Veera Uka & Ors	...Appellants
<i>Versus</i>	
Gautam Builders & Ors	...Respondents

Mr RS Yadav, for the Applicants in CAF/206/2022.
Mr Amogh Singh, i/b Kaustubh Patil, for Respondent No. 1.

CORAM G.S. Patel, J.
DATED: 29th September 2022

PC:-

SHEPHALI
SANJAY
MORMARE

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SHEPHALI SANJAY
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Date: 2022.09.30
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1. This application is specially placed before me.

2. On 11th July 2017, I dismissed the First Appeal and consequentially the Civil Application for stay and the Civil Application for condonation of delay of 376 days in filing the Appeal because none appeared for the Appellants on that date. The present Civil Application seeks that my order be set aside. But there is also a delay in filing this Civil Application for restoration. This delay is 294 days.

3. What actually happened was that this Civil Application was listed before another Single Judge. Simply on the reading of the prayer (that my order of 11th July 2017 be “set aside”), the learned single Judge felt that the matter should be placed before me because it is in the nature of a review. It is nothing of the kind. No review is sought of my order of 11th July 2017 at all. The application is the most routine one, to recall an earlier order of dismissal. It just happens to use the word “set aside”. That makes no difference to the nature of the application. A recall order can be passed any successor Court if sufficient grounds are made out. There is no law or rule that an order for recall (or ‘setting aside’ in such circumstances) must go before the same judge or court who or which passed the earlier order. This is not even a question of propriety. The relief sought in the restoration application is *not* on the basis that my earlier order was wrong in any way, but simply says that there is good reason why the Applicants and their Advocate did not appear on the date of dismissal. Any successor court can consider such a restoration application on merits. The original order is not sought to be ‘reviewed’ and it is not suggested that the original order has an is facially erroneous or is otherwise vulnerable. Such a restoration application is really nothing more than a

clemency plea to be given one more opportunity to pursue the cause.

4. In this present Civil Application, there is some sort of explanation in paragraphs 12 and 13. I propose to condone the delay and allow the restoration application. But this is a final opportunity. I am also making it clear that I am restoring the First Appeal, the stay application, and the delay condonation application for First Appeal. All these will have to be addressed on merits. If the delay in filing the First Appeal is not condoned, then the Appeal will stand dismissed.

5. Accordingly, the present Civil Application is made absolute in terms of prayers clauses (a) and (b) which read thus:

“a) This Hon’ble court be pleased to condone the delay of 294 days in taking out the present application from the day of the order of the dismissal dated 11/07/2017.

b) This Hon’ble court be pleased to set aside the order dated 11/07/2017 passed by His Lordship Justice SHRI G.S. PATEL and restore the application for Condonation of delay No. 1403 of 2014, Stay Application No. 1404 of 2014 and First Appeal (St) No. 9825 of 2014 and fresh date of the hearing be fixed for the appeal and Civil Applications.”

6. Liberty to the Applicants to have the First Appeal, the Civil Application No. 1403 of 2014 (delay condonation) and Civil Application No. 1404 of 2014 (stay application) listed before the appropriate Bench.

(G. S. Patel, J)