

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 29 OF 2022
IN
SECOND APPEAL NO.598 of 1989

Satling Mahaling Ketgale, since .. Applicants
deceased thru LRs Mahaling Satling
Ketgale & ors

Versus

Laxman Ganpati Shinde, deceased .. Respondents
thru LRs Smt.Sajabai Laxman Shinde
& ors

...

Mr. Kishor Patil i/b Pramod Joshi for the applicants.
Mr.V.B.Rajure for the respondents.

CORAM: BHARATI DANGRE, J.
DATED : 22nd MARCH, 2022

P.C:-

1 Heard learned counsel for the applicants and learned
counsel for the respondents.

2 By the present application, the delay in filing the
restoration application, dismissing the Second Appeal in default
on 7/9/2004, is sought to be condoned. Though the application
do not specify the period of delay, the Registry has notified the
delay to be of 11 years and 164 days.

3 Appeal No.598/1988 was pending before this Court for adjudication, assailing the judgment of the Civil Judge, Jr. Division, Kurundwad, dated 31/3/1982. The Appeal came to be dismissed in default on 7/9/2004, when it was listed on the final hearing board and the explanation offered in the application is to the effect that since the counsel did not notice it's listing, the matter was not attended to.

 The application seeking it's restoration on 11/7/2016, offered a vague explanation in paragraph nos.3 and 4, and on it's careful reading, it can only be meant to read that the Advocate was under an impression that the Second Appeal is pending and recently, when the status of the Appeal is checked, the computerized record of the Court reveal that the Second Appeal was dismissed in default and the pending applications were disposed off.

 Bereft of any further details, the application proceed to state, that thereafter the copies of the record were obtained and the application is filed seeking condonation of delay.

 The reasoning stated in paragraph nos.3 and 4 of the application do not inspire any confidence, particularly since it lack any material details and the delay of 11 years is sought to be explained without reference to any dates or any particulars being offered.

4 True it is that the Court should be lenient in favour of the litigants with rural background and particularly those who plead that they are not aware of the niceties out of work, but at the same time, while the prayer for condoning of delay is to be considered, the diligence on part of the person who has approached the Court is also to be watched out, and particularly, because the person is ignorant of the position of law, he cannot take undue benefit and avoid the procedure prescribed by law.

 Here is a case where particularly the appellant was represented by a lawyer and not only the appellant but also his lawyer had failed to adopt due diligence in prosecuting the Appeal which is filed in the year 1989. Since the explanation offered is bereft of any details and particulars, it depicts the casual approach of the appellant and in the wake of the aforesaid, do not deserve any sympathy since no attempt is made to explain the delay, in the ground specified in paragraph nos.3 and 4.

 I am not convinced to grant any indulgence. Necessarily, the Civil Application is dismissed.

(SMT. BHARATI DANGRE, J.)