

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

**INTERIM APPLICATION NO.18626 OF 2022
IN
SECOND APPEAL NO.1041 OF 2004
WITH
INTERIM APPLICATION NO.18630 OF 2022
IN
SECOND APPEAL NO.1042 OF 2004**

Baban Genu Dhorake

Since deceased through legal
representatives

1/1. Thakaram Baban Dhorake and Ors.Applicants

Vs.

1. Maruti Balkrishna Yede and Ors.Respondents

.....

Mr. K.S.Dewal for the Applicants/Appellants.

Mr. Jaydeep Deo for the Respondent Nos.1 and 2.

**CORAM: SANDEEP K. SHINDE, J.
RESERVED ON : JULY 29, 2022
PRONOUNCED ON: OCTOBER 4, 2022**

P.C.

1. These two applications seek to recall and set aside order of abatement and restore the Second Appeals to the file by condoning the delay of 16 years and 121 days.

2. Heard learned counsel for the Parties.

3. **Facts:**

Shri Baban Genu Dhorake, father of the applicants was sole appellant in two Second Appeals. He passed away on

25th November, 2005. Applicants are his heirs. Appellant, was defendant in the Special Civil Suit No.921 of 1997, instituted by the respondents for possession and mesne profits. Applicants' case is that, respondents had filed suit, only to create impediment in the Regular Civil Suit No.20 of 1997 filed by their father Baban Genu Dhokare for declaration and perpetual injunction. Trial Court by common judgment, dated 17th April, 2014, decreed suit filed by applicant father and dismissed suit of the respondents. However, Appellate Court reversed the decrees, drawn, in both the suits by judgments dated 17th April, 2004 and 15th April, 2004. Thus, these Second Appeals were filed by Baban Dhokare, father of applicants. Second Appeals were admitted on 7th October, 2004 and execution of the decrees was stayed.

4. Pending appeals, sole appellant passed away on 25th September, 2005.

5. It is applicants' case that in the month of September, 2022, they had received summons dated 18th August, 2022 in Regular Darkhast No.20 of 2004, by which they were called upon to remain present before the executing Court on 30th September, 2022. Whereafter they went to meet their local lawyer, but were

informed that lawyer had expired on 23rd April, 2021. Their case is, they were unaware of the Second Appeals and the proceedings therein and only after establishing contact with the advocate, who was representing the appellant, they moved present applications. It is their contention that delay on their part was neither deliberate nor intentional and, therefore, in the interest of justice, delay may be condoned and appeals be restored to the file.

6. It appears, respondents circulated Second Appeals on 9th April, 2021, with due intimation to the counsel appearing for the appellant. However, on 9th April, 2021, none appeared for the appellant. It appears, counsel appearing for the respondents apprised the Court that pending appeal, sole appellant has expired. Whereafter, hearing was stand over to 20th April, 2021. Thereafter, respondents by e-mail dated 15th April, 2021 intimated appellants advocate of matter being adjourned to 20th April, 2021. However, no steps were taken to bring legal representatives on record. Thereafter, once again advocate for respondents informed the appellants' advocate vide e-mail dated 16th March, 2022 stating sole appellant has expired on 25th November, 2005 and matter is circulated for 17th March, 2022. However, since no steps were taken to bring legal

representatives on record, this Court vide order dated 17th March, 2022 dismissed the Second Appeals as abated. Thereafter, on 26th March, 2022, advocate for the appellant addressed a letter to Mr. Baban Genu Dhorake (Appellant) to contact him for instructions. The postal envelope returned unclaimed reporting 'Addressee was dead'. Therefore, it could be seen that for want of instructions and particulars of legal representatives, advocate for the appellant could not take steps to restore the appeal. However, in the meanwhile, may be in or around August, 2022, executing Court, issued possession warrant, whereafter, applicants contacted their advocate and filed these applications on 20th September, 2022.

7. The delay of 16 years and 121 days is inordinate and has not been explained by the applicants at all. All the applicants are senior citizens and it is very unlikely that they were unaware of the appeals instituted by Baban Genu Dhokare. Suit in this case was instituted in the year 1997 and the decree for possession was passed by the Appellate Court in 2004.

8 In consideration of facts of the case and for want of explanation by the applicants for not taking timely steps, in my view, applications moved after 16 years to set aside the order of abatement calls for no interference. Applications are, therefore, dismissed.

(SANDEEP K. SHINDE J.)