

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR.

CIVIL APPLICATION (CAO) No.201 OF 2022
IN
MISC. CIVIL APPLICATION STAMP No.12505 OF 2021
IN
SECOND APPEAL No.85 OF 2022
(REJECTED SECOND APPEAL No.111 OF 2020)

(Pankaj s/o. Prabhakar Joshi vs. Shri Muralidhar s/o. Namdeorao Raut and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri Shaunak Kothekar h/f. Shri V.S. Giramkar, Advocate for the appellant.
Shri Vijay P Panpalia, Advocate for Respondent No.1.

Coram : Smt. M.S.Jawalkar, J.
Reserved on : 22nd March, 2022.
Pronounced on : 30th March, 2022.

1. The present application is moved by the respondent No.1 for recalling the order dated 16.2.2022. It is submitted that the second appeal was rejected for non removal of office objections. Thus, the appellant moved an application for restoring the matter and there was delay of 619 days in moving such application. Therefore, appellant also moved application for condonation of delay. The said application was listed on 23.11.2021 and this Court was pleased to issue notices to other side. The notices came to be re-issued on 6.1.2022 which was made returnable by six weeks. The said notices were received by the present applicant/respondent in first week of February 2022. It appears

that the notices were made returnable on 17.2.2022. The applicant engaged his lawyer on 16.7.2022. Though on the notices returnable date is mentioned as 17.2.2022, it is submitted by the learned counsel for the applicant, that the mater was circulated on 16.2.2022 by the counsel for the appellant and after inquiry he came to know about passing of the order. Thus, he pray for recalling the order passed on 16.2.2022.

2. The other side was served with the copy of application for recalling of order. The learned counsel for the appellant submitted that no prejudice is going to cause to the applicant as registration was refused for want of removal of office objections. Therefore, there is no need to recall the order is there.

3. I have heard both the parties.

4. It appears that on application moved by the appellant for restoration of rejected Second Appeal No.111/2020 notices were issued on 23rd November, 2021, returnable within three weeks. Thereafter notices were re-issued and was made returnable six weeks and date was given as 17.2.2022. However, it appears that the matter was circulated by the appellant on 16.2.2022. Though vakalatnama was filed by the learned counsel for the respondent No.1 on 16.2.2022 his name was not appearing in the cause list as board was prepared on 14.2.2022. As such, there was no appearance on behalf of the respondent.

5. I have also called for status of matter at the relevant time from the office. It appears that service was effected on 4.2.2022 and xerox copy of the report of service of notice is received by the office on 10.2.2022 in which no copy of sealed notice was attached. Hence, await report for compliance was shown in cause list. Original copy of Compliance report received to this office on 21.2.2022. Hence, while listing the matter on board service was shown awaited. It is true that the matter was circulated on 16.2.2022 and in circulation slip it was mentioned that service was complete. In fact, respondents received notice on 4.2.2022. However, vakalatnama was filed on 16.2.2022 on the day when the matter was listed for argument on application for condonation of delay. True it is that notices were issued, however, it is a matter of record that the delay was condoned on 16.2.2022, subject to costs of Rs.1,000/- and appeal was directed to be restored. The registration of the said appeal was refused on the ground that there was certain office objections which were not removed by the appellant in spite of granting opportunity. The reasons put-forth for non-removal of office objections were considered while deciding the application for condonation of delay. In fact, by registering Second Appeal no prejudice is going to cause to the appellant as no notice issued in Second appeal yet. Once Second Appeal is restored, it cannot

be placed again to the stage of rejected Second Appeal for want of office objections. Office objections were also removed. Thus, the position cannot be reversed back.

6. Hence, the application is rejected.

(SMT. M.S.JAWALKAR, J.)

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