

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

CIVIL APPLICATION (CAO) NO. 264/2022 IN M.C.A. ST.
NO.5728/2022 IN SECOND APPEAL NO.25/2020

Rajendra S/o Mahadeorao Bhoyar

-- Appellant /
Applicant

Vs.

Santosh S/o Loonkaranji Soni

-- Respondent

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V.U. Waghmare, Advocate for Applicant

CORAM : MANISH PITALE, J.

DATE : 13th APRIL, 2022

These are the applications filed on behalf of the respondent – appellant for restoration of appeal, which was dismissed by order dated 22/12/2021 and for condonation of delay in moving the application for restoration. There is a delay of 58 days in filing application for restoration.

2. Heard Mr. Waghmare, learned counsel appearing for the applicant / appellant. It is pointed out that in the

second appeal, this Court by order dated 17/01/2020, had recorded the contentions raised on behalf of the appellant and two substantial questions of law were framed. On the same date, this Court issued notice on the application for interim relief and granted stay of the execution proceedings.

3. Thereafter, the interim order was continued and when the appeal was listed for consideration on 22/12/2021, this Court took note of the fact that in the order dated 17/01/2020, whereby substantial questions of law had been framed, the appellant was directed to place on record the entire paper book of first appellate Court, along with all exhibited documents. The Court then recorded that despite the fact that a period of two years had lapsed, the appellant had not complied with the said direction. Accordingly, a last opportunity of three weeks was granted for complying with the said order and it was directed that if the said direction was not complied with in three weeks, the appeal would stand dismissed without reference to the Court. It appears that since the direction was not complied with, the appeal stood dismissed without reference to the Court.

4. It was the case of the appellant that thereafter when the notice from the Executing Court was received that the applicant / appellant became aware of the dismissal of the second appeal and immediately the present applications are moved.

5. This Court has perused the contents of the applications. It is specifically pointed out on behalf of the applicant / appellant that filing of paper book before the First Appellate Court was dispensed with. Therefore, there was no way in which the entire paper book could be filed. It is further submitted that the applicant / appellant has now filed copies of all exhibited documents before this Court.

6. Since this Court had framed two substantial questions of law by order dated 17/01/2020 and an interim order was granted in favour of the applicant / appellant, in the peculiar facts and circumstances of the present case, this Court is convinced that a case for condonation of delay and for restoration of the appeal is made out. Nonetheless, appropriate costs need to be imposed upon the appellant for being absent before this Court on the date i.e. 22/12/2021, when the conditional order was passed in the appeal.

7. For the reasons stated above, the applications are allowed. Delay is condoned. Appeal is restored subject to the applicant depositing costs of Rs.10,000/- (Rs. Ten Thousand) within two weeks from today. The costs shall be deposited with the High Court Legal Services Sub-Committee, Nagpur and proof shall be furnished before the Registry.

8. Needless to say, restoration of the appeal would result in the interim order dated 17/01/2020, being restored.

9. In these circumstances, since the respondent is not represented by counsel, fresh notice will have to be issued to the respondents.

10. Upon the applicant depositing costs and furnishing proof thereof in the stipulated period of time, issue fresh notice to the respondents, returnable in six weeks.

11. The applications stand disposed of.