

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

CIVIL APPLICATION (F) NO. 2614 OF 2021
IN
FIRST APPEAL NO. 894 OF 2011

VILAS S/O GULABRAO YEWALEKAR
VERSUS
STATE OF MAHARASHTRA AND OTHERS

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

Court's or Judge's orders

Smt. S. W. Deshpande, Advocate for appellant.
Shri M. A. Kadu, AGP for respondent Nos.1 and 2.
Ms. Ashwini Athalye, Advocate for respondent No.3.

CORAM : V. G. BISHT, J.
DATE : 04/04/2022

1. This is an application for restoration of the First Appeal by setting aside the order dated 04/12/2012 passed by the Registrar (Judicial).

2. Since the appellant had failed to pay Bhatta for issuing notice to respondent No.3 on correct address of respondent No.3, learned Registrar (Judicial) was pleased to pass the order on 04/12/2012 under Rule 6(e) Chapter VII of the Bombay High Court Appellate Side Rules, 1960.

3. Heard learned counsel for the parties.

4. Smt. S. W. Deshpande, learned counsel for the appellant submits that at the relevant time, there was no question of payment of Bhatta and therefore, First Appeal is required to be restored to its original position.

5. Ms. Ashwini Athalye, Learned counsel for respondent No.3, on the other hand, vehemently opposes the application and submits that there is enormous delay of more than 9 years in moving the application for restoration. Learned counsel justified the order of dismissal of the learned Registrar (Judicial) inasmuch as the appellant had failed to pay Bhatta for serving the notices despite giving sufficient opportunity. Accordingly, if at all, this Court is inclined to restore the first appeal, in that event, the appellant shall not be entitled for interest for the delayed period of 9 years, argued learned counsel.

6. I have gone through the record of the case. There is endorsement of concerned Clerk dated 10/10/2012 after referring to the learned Registrar's order dated 17/07/2012 that the Bhatta of Rs.6.25 was required to be paid by the appellant so as to issue notice on correct address of respondent No.3. Again, there is endorsement dated 29/10/2012 that neither notices were given nor Bhatta was paid.

7. I have also heard learned Registrar (Judicial) who is present before the Court and refutes the contention of the learned counsel for the appellant that at the relevant time, no Bhatta was required to be paid by the appellant.

8. The record speaks in itself. Needless to say, the appellant was lethargic in payment of Bhatta leading to the

dismissal of First Appeal at the hands of Registrar (Judicial) on 04/12/2012. It is only after 9 years the restoration application is moved.

9. Although I am inclined to allow the application for restoration of First Appeal but at the same time it is made clear that the appellant shall not be entitled for interest of delayed period of 9 years.

10. In view of above, the application is allowed in the aforesaid terms and the First Appeal is restored to its original position.

11. Civil application is disposed of accordingly.

[V. G. BISHT, J.]

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