

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

CIVIL APPLICATION (CAO) NO. 71 OF 2021
IN
MISC. CIVIL APPLICATION (ST.) NO. 12933 OF 2020
IN
SECOND APPEAL (SA) NO. 368 OF 2014 (D)

Pandurang S/o. Shankarrao Koparkar

...VERSUS...

Smt. Chandrabhaga Wd/o. Shankarrao Koparkar and ors.

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

Court's or Judge's order

Shri D.R. Bhoyar, Advocate for appellant/applicant.

Shri S.J. Kadu, Advocate for respondents.

CORAM : SMT. M. S. JAWALKAR, J.

DATE : 14th October, 2022.

Heard the learned counsel for the applicant.

2. The present application is filed for condonation of delay in filing the application for restoration of appeal.

3. It appears that the substantial question of law had been framed in the matter on 18/04/2016 and notices were issued, returnable on 24/06/2016. Thereafter, the matter was listed on 25/07/2016, 20/08/2016, 07/09/2016, 22/11/2016 and lastly on 24/11/2016. However, on 24/11/2016, when the matter was called out, the learned counsel for the appellant failed to appear, therefore, the appeal came to be dismissed for want of prosecution.

4. It appears from the Farad Sheet that, on 25/07/2016, 07/09/2016 and 22/11/2016, the learned counsel for the appellant

was present. It is the contention of the appellant that on 15/10/2020, he received a letter from the office of Deputy Collector (Land Acquisition Department), Wardha, inquiring about the status of pending Second Appeal. Therefore, in pursuance to the said letter, when he made enquiry to the counsel about the appeal, the learned counsel had not responded properly. It was informed by the learned counsel that, due to pandemic situation, the Courts are closed. It is further contended that the learned counsel did not take any efforts to intimate about the dismissal of appeal. As such, due to laps on the part of the counsel, he could not confirm the status of the appeal.

5. The learned counsel for the respondents vehemently opposed the application and submits that there is near about four years' delay and there is no justifiable reason given to condone the same.

6. After hearing both the parties, I am satisfied that there is no intentional or deliberate delay on the part of the applicant. The application is supported with the affidavit and the applicant has annexed the letter received from Deputy Collector (Land Acquisition). As such, I am inclined to condone the delay. However, at the same time, inconvenience caused to the respondents cannot be overlooked and they have to be duly compensated for that. As such, I pass the following order:-

ORDER

- I) The application is allowed.
- II) Delay of 1453 days is hereby condoned, subject to costs of Rs. 8,000/- (Rs. 1,000/- for each respondents) to be paid within two weeks.

MISC. CIVIL APPLICATION (ST.) NO. 12933 OF 2020

The present application is filed for restoration of appeal which was dismissed for want of prosecution.

2. The reasons are the same as mentioned for condonation of delay. As such, the application is allowed.

3. The order dated 24/11/2016 of dismissal of appeal for want of prosecution is hereby recalled.

4. Registry is directed to register the Second Appeal on its old registered number. The application stands disposed of.

(Smt. M.S. Jawalkar, J.)

B.T.Khapekar