

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

CIVIL APPLICATION (CAO) NO.699/2022
AND
MISC. CIVIL APPLICATION ST. NO.12897/2022
IN
SECOND APPEAL ST. NO.8721/2022 (Rejected)

Mohammad Sabir S/o Khalilullah and another
...Versus...
Manzoor Alam S/o Haji Zabihulla and others

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

Court's or Judge's orders

Shri A.H. Jamal, Advocate for applicants

CORAM : AVINASH G. GHAROTE, J.
DATE : 19/09/2022

1. Civil Application No.699/2022 seeks condonation of delay of 15 days in filing the application for restoration of Second Appeal Stamp No.8721/2022 for non-removal of office objections, on account of which, the registration was refused by the order dated 07/07/2022.

2. Shri A.H. Jamal, learned counsel for the applicants undertakes and ensures that such mistake shall not happen in the future, accepting which, the civil application for condonation of delay bearing Civil Application No.699/2022 is allowed and so also Misc. Civil Application Stamp No.12897/2022, seeking restoration of second appeal is

allowed, subject to the office objections being removed within a period of one week from today.

3. Both civil applications are disposed of accordingly.
No order as to costs.

SECOND APPEAL ST. NO.8721/2022

1. Heard Shri Jamal, learned counsel for the applicants. It is contended that in a suit for removal of encroachment, though the Commissioner was appointed and had submitted his report, in respect of which, submissions were made, and an application at Exh.100 (pg.17) was filed before the learned Trial Court, requesting that the Commissioner (City Survey Officer No.1) be permitted to be examined, the same was not granted, which has resulted in miscarriage of justice. A similar application, under Order XLI Rule 21 of the Code of Civil Procedure before the learned Appellate Court also has not been decided.

2. Issue notice for final disposal to the respondents upon the following substantial question of law.

Whether the non-granting of an opportunity to examine the Court Commissioner, who has spoken about the encroachment made, results in miscarriage of justice ?

3. Notice is made returnable on 03/10/2022.
4. The appellants to serve the respondents by all modes permissible in law. Hamdast granted.

(AVINASH G. GHAROTE, J.)

Wadkar