

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

CIVIL APPLICATION (CAO) NO. 281 OF 2022
IN
MISC. CIVIL APPLICATION (ST.) NO. 16984 OF 2021

Shevantabai d/o Govinda Bhaskar and anr.

Vs.

Chandrabhagabai wd/o Ramchandra Dangre and Ors.

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

Court's or Judge's Orders.

Mr. Pushkar Ghare, Advocate for appellants.

CORAM : MANISH PITALE J.

DATE : 20.04.2022.

Misc.Civil Application (Stamp) No.16984 of 2021 and Civil Application (CAO) No.281/2022 are applications seeking restoration of the appeal and for condonation of delay in moving the application for restoration.

2. A perusal of the application shows that there is a delay of about 765 days in seeking restoration of the appeal, which stood dismissed for non-removal of office objections, as far back as on 13.09.2019. It is claimed that the applicants were totally unaware about such dismissal of the appeal.

3. In the present case, the impugned judgment and order was passed by the appellate Court on 19.01.2018 and it appears that the appeal was filed before this Court in the year 2018 itself. The appeal remained pending for non-removal of office objections. It appears that on an earlier occasion it was dismissed for default. Thereafter, it was sought to be restored and the learned Registrar passed an order giving time to the applicants to remove the office objections. Since, the objections were not removed in the stipulated period of time, on 13.09.2019, the appeal itself stood dismissed on the ground of non-removal of office objections.

4. Thereafter, no remedial measures were taken on the part of the applicants or their counsel. After a delay of 765 days, the present applications has been filed. It is claimed that when notices were received in the execution proceedings that the applicants woke up from their slumber and contacted their counsel, who himself was unaware about dismissal of the appeal on 13.09.2019. It is stated in a very casual manner that the counsel, due to oversight, missed out on the fact of dismissal of the appeal on 13.09.2019 and when the applicants contacted him, he made enquiries and became aware about the order dated 13.09.2019. It is thereafter,

that on 21.12.2021, the present applications were filed.

5. It appears that thereafter, the applicants chose to change their counsel and they engaged the counsel who has now appeared on their behalf before this Court

6. The learned counsel appearing for the applicants submits that the executing Court proceeded in the meanwhile by issuing warrants and as on today, admittedly the applicants have lost possession of the suit property. Yet, it is contended that due to no fault on the part of the applicants, they are facing this predicament and that if the appeal is not restored, they will be deprived of consideration their case on merits. It is sought to be demonstrated that the applicants do have a strong case on merits in the second appeal and that this Court may show indulgence to consider the appeal on merits by allowing the present application.

7. This Court has noted the chronology of events in the present case. It demonstrates the approach adopted by the applicants, as also their erstwhile counsel in pursuing the matter before this Court. It is frequently seen that litigants and counsel

appeals before this Court and leave them unattended which results in dismissal for default or non-removal of office objections. It is seen that they wake up from their slumber when the executing Court takes up the matter in right earnest, which itself usually takes a long period of time. Filing of appeals and keeping them pending has now become a tactic on the part of litigants and their counsel to delay proceedings before the Courts below by giving an impression that the matter is pending before the High Court.

8. Applications like the present one are causally filed by stating that counsel for the applicants missed out on the listing of the appeal at the stage of removal of objections and it is claimed that when the litigants called up the counsel on pressure being put by the executing Court that upon inquiries the counsel became aware about the dismissal of the appeal for default or for non-removal of office objections.

9. The explanation given in the present application, to say the least is casual and it is based on a presumption that this Court would condone delay and restore appeals, since the contentions sought be raised by such applicants usually are taken

up on merits despite considerable delay in seeking restoration of the proceeding.

10. The contents of the applications for consideration before this Court today also demonstrate the casual manner in which they have been drafted. This is not a comment on the counsel appearing for the applicants today. Nonetheless, it demonstrates a trend that is observed in a number of such matters by this Court.

11. In any case, as on today, the applicants have lost possession of the suit property. This Court is inclined to give a chance to the applicants for consideration of their contention on merits in the accompanying second appeal but, such an opportunity cannot be granted without imposing appropriate costs for the manner in which the appeal was pursued before this Court and the casual manner in which application for restoration of the appeal has been filed after delay of 765 days. It is only with a view to grant an opportunity to the applicants to make submissions on merits in the accompanying second appeal that this Court is showing indulgence, albeit upon imposing appropriate costs.

12. In view of the above, the applications are allowed.

13. The delay is condoned and the appeal is restored, subject to the applicants depositing an amount of ₹ 25,000/- as costs. The costs shall be paid in the account of the High Court Legal Services Sub-Committee, Nagpur, within a period of **four weeks** from today.

14. Upon the costs being deposited, the appeal shall stand restored and it shall be listed for consideration.

15. Liberty is reserved for the applicants to mention the appeal for urgent listing upon depositing the costs as directed above.

16. The applications stand disposed of.

JUDGE

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2022.04.22
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