

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

CIVIL APPLICATION NO. 9639 OF 2022
IN
SA/164/2013

**DHARAMARAJ VISHWANATH MULEY AND ANOTHER
VERSUS
UMASHANKAR SAHEBRAO SHINDE AND ANOTHER**

...
Advocate for Applicants : Mr. A.N. Sabnis
Advocate for Respondents : Mr. V.G. Deshmukh
h/f. Mr. V.U. Pawar
...

**CORAM : R.M. JOSHI, J.
DATE : 16th March, 2023**

PER COURT :

1. This application is for condonation of delay of 175 days in preferring Civil Application for restoration of Second Appeal.
2. It is the contention of the applicants that the matter was listed for admission on 17th August, 2021 and the counsel for the applicants were not present in Aurangabad and, therefore, the matter remained unattended. Thereafter, it was adjourned to 16th September, 2021, and on that day too none appeared and, therefore, Second Appeal was dismissed for want of prosecution.

3. It is further contended that dismissal of the appeal has been noticed by the applicants upon enquiry made by them in the month of May, 2022, when the applicants contacted their Advocate seeking information about the status of the case.
4. Learned counsel for the respondents opposes the application. He contends that no reasons are made out by the applicants for condonation of delay.
5. Perusal of the application shows that applicants have given reasons for non appearance of Advocate as well as explained the delay caused in preferring the application for restoration of Second Appeal.
6. It cannot be said that there was any *mala fide* intention on the part of the applicants in not preferring the application for restoration of Second Appeal immediately. It is always open for respondents to oppose the Second Appeal on merit.
7. In view of the above, application deserves to be allowed. Application stands allowed in terms of prayer clause 'a' to 'c'.

8. Second Appeal No. 164 of 2013 is restored to the file to its original position.
9. Learned counsel for respondents waives service of notice of the Second Appeal.

[R.M. JOSHI, J.]

SPChauhan