

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 4984 OF 2016  
IN SA/92/1995

Vanchabai W/o Sridhar Parade @ Bhosale  
Through LR's ...Applicants

**Versus**

Vinayak Tulshirad Parade and Ors ...Respondents

...  
Mr. Mr. Nitin Jagdale h/f V. D. Salunke, Advocate for  
the Applicants.  
Mr. G. B. Kingre, Advocate for the Respondent No. 1.  
...

**CORAM : R.M. JOSHI, J**

**DATE : APRIL 05, 2023**

**PER COURT :**

1. This application is filed for restoration of Second Appeal No. 92/1995, which came to be dismissed for non removal of office objections by order dated 12.12.1997. It is the contention of the Applicant that the original Appellant was pursuing the appeal and that filing of this appeal was not within their knowledge.

2. The appeal is already admitted. There is no dispute about the fact that SA/93/1995 arising out of the same impugned judgment and decree is also pending before this Court.

3. Learned Counsel for the Respondent opposed the said contention by stating that prejudice and irreparable loss will cause to the Respondent if inordinate delay caused in restoration of appeal is condoned.

4. It is settled position of law that it is always in the interest of parties that *lis* between them is decided on merits instead of its termination on technical grounds. This Court finds that Applicants could not have gained anything by not preferring application for restoration of appeal in time. Prosecution of other appeal indicates that Appellant was keen in prosecuting his cause before this Court. This Court finds that no malafides can be attributed to the Appellants for not taking steps in time.

5. Interest of justice requires that the Applicants are given are opportunity to pursue the second appeal. However, considering the time lapsed in between the said restoration will be subject to payment of cost of Rs. 7,500/- to be paid to the contesting Respondents herein within two week. If the cost not paid or deposited within specified period, this order

shall stands vacated without reference to the Court. If cost is paid within time, appeal be restored to its original position.

**(R.M. JOSHI, J.)**

Malani