

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

**CIVIL APPLICATION NO. 10925 OF 2023
IN
SECOND APPEAL NO. 187 OF 2002**

Municipal Council Umari
Through its Chief Officer

.. Applicant

Versus

Poonamchand Narsingdas Agrawal
Through L.Rs. Yashodabai Poonamchand Agrawal
and others

.. Respondents

Mr. Bhausahab S. Deshmukh, Advocate for the Applicant.

CORAM : KISHORE C. SANT, J.

DATED : 20th SEPTEMBER, 2023.

P C. :-

. Heard for some time.

2. This application is for restoration of second appeal that was already admitted on 28.10.2002 and interim relief was granted thereby staying the effect and execution of the judgment and order passed by the First Appellate Court and decree in the suit. However, during the pendency, the respondent died on 01.08.2010. The applicant came to know about the said death in the year 2011. The application was therefore filed for bringing legal heirs of deceased respondent on record bearing Civil Application No. 9441/2011 and the same was

allowed by this Court by order dated 01.10.2013. Four (04) weeks time was granted to carry out the amendment with a stipulation that if no steps are taken the application shall stand dismissed without reference to the Court. Since no amendment was carried out and no steps were taken the second appeal came to be abated.

3. It is reported that, now the execution proceeding is filed by the legal heirs of respondent-original plaintiff. On passing of some orders in the execution proceeding the present applicant made an enquiry about the status of the second appeal and it is only thereupon it is learnt that the appeal came to be abated for inaction on the part of the applicant. Now the application is filed for bringing legal heirs of deceased respondent on record along with prayer to condone the delay of 3499 days. It is reported that, now in the Execution Court the matter is fixed today for passing the order to take possession of the alleged encroached portion in possession of the present application.

4. Considering the urgency expressed this Court has taken up the civil application today. While going through the previous record it is found that at the time of filing of the second appeal itself there was delay. This Court for condonation of delay had imposed cost of Rs. 1,000/- (Rs. One Thousand only).

5. Thus, it is seen that the second appeal was already admitted on 28.10.2002 and interim relief was granted. This Court had issued notice to respondent. Humdast was taken. It is reported that, the respondent is served on 13.09.2022. This Court had granted one more opportunity to the respondent and the matter was fixed today. Today also none appears for respondent. Therefore, this Court finds that, the order of interim relief also needs to be restored to its original status. Looking at the negligence on the part of the applicant this Court finds that, while restoring the second appeal and the interim order it would be in the interest of justice to impose cost upon the applicant. The above order shall be subject to condition of depositing Rs. 10,000/- (Rs. Ten Thousand only) to the Legal Aid Centre of this High Court within a period eight (08) weeks from today.

6. With this, the civil application is allowed and is disposed off.

7. Second appeal No. 187/2002 stands restored to its original status and with the order of interim relief.

8. Parties to act upon authenticated copy of this order.

(KISHORE C. SANT, J.)

P.S.B.