

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CIVIL APPLICATION NO. 15787 of 2022 IN
CIVIL APPLICATION NO. 15788 OF 2022 IN
SECOND APPEAL NO. 38 OF 2013

Syed Ahmed Syed Nizam & others

Applicants

Versus

Muzammil Khan Chand Khan
(Deceased through LRs) & others

Respondents

Mr. S. B. Patel, Advocate for the applicants.

CORAM : R. M. JOSHI, J.
DATE : 10th APRIL, 2023.

PER COURT :

1. This application is filed for condonation of delay of 152 days caused in filing application for restoration of application by setting side order dated 22nd April, 2022 passed in Second Appeal No. 38/2013.

2. It is the contention of applicants that during the pendency of the second appeal, learned counsel representing them died. This was not within their knowledge and therefore, no application could be filed in time.

3. In spite of service of notice, none appears for respondents which indicates that these respondents are not interested in opposing the application.

4. Perusal of the application shows that for no fault of the applicants and for want of knowledge about dismissal of the appeal, no steps were taken in time to restore the same. This Court, therefore, finds it to be a fit case wherein delay needs to be condoned and second appeal deserves to be restored on the file. Hence, application is allowed in terms of prayer clause 'B'.

(R. M. JOSHI)
Judge

dyb

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Mr. S. B. Patel, Advocate for the applicants.

CORAM : R. M. JOSHI, J.

DATE : 10th APRIL, 2023.

PER COURT :

1. This is an application for restoration of Second Appeal No. 38/2013 by setting aside order passed by this Court on 22nd April, 2022 thereby dismissing the second appeal for want of prosecution.

2. It is the contention of applicants that during the pendency of the second appeal, learned counsel representing them died. This was not within their knowledge and therefore, no steps were taken in that regard.

3. Perusal of the application shows that for want of knowledge about death of the counsel representing the applicants, no steps were taken by them. In view of this, this Court finds it a fit case to set aside the order dated 22nd April, 2022 and restore the second appeal to its original position.

4. In the result, order dated 22nd April, 2022, dismissing the second appeal for want of prosecution stands set aside. Appeal be restored to its original position.

(R. M. JOSHI)
Judge

dyb

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
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SECOND APPEAL NO. 38 OF 2013

Syed Ahmed Syed Nizam & others

Appellants

Versus

Muzammil Khan Chand Khan
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Respondents

Mr. S. B. Patel, Advocate for the appellants.

CORAM : R. M. JOSHI, J.
DATE : 10th APRIL, 2023.

PER COURT :

1. Issue notice to respondents returnable on 5th June, 2023.

2. Learned counsel for appellants pray for stay of the impugned judgment and decree. Liberty is granted to press for stay of the impugned judgment and decree provided respondents are served with the notice.

3. Private service is allowed.

(R. M. JOSHI)
Judge