



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3880 OF 2019
IN
SECOND APPEAL NO.664 OF 1992

Baburao Madahv Patil,
Since deceased through his heirs &
Legal representatives,

- a. Shalini Baburao Patil,
Now deceased by her legal
representatives and heirs
Appellant (b) to (f),
- b. Shailesh Baburao Patil,
Aged 70 years,
- c. Narendra Baburao Patil,
Aged 61 years,
- d. Ravindra Baburao Patil,
Aged 55 years,
- e. Snehalata Trimbak Bore,
Aged 62 years,
At Dedale Post Bavada,
both R/o. Dedale, Post Bavade
Tal. Dahanu, District : Palghar,
Pin - 401 103.
- f. Chandrika C. Sankhe,
Aged 58 years,
At & Post Kumbawali, Boisar,
Tal. Palghar, District : Palghar.
Pin - 401 103.

...Applicant
/Org. Appellant.

In the matter between :-

Baburao Madahv Patil,
Since deceased through his heirs &
Legal representatives,

- a. Shalini Baburao Patil,
Now deceased by her legal
representatives and heirs
Appellant (b) to (f),
- b. Shailesh Baburao Patil,
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At Dedale Post Bavada,
both R/o. Dedale, Post Bavade
Tal. Dahanu, District : Palghar,
Pin - 401 103.
- f. Chandrika C. Sankhe,
Aged 58 years,
At & Post Kumbawali, Boisar,
Tal. Palghar, District : Palghar.
Pin - 401 103. ...Appellant

Versus

- 1. Smt. Shashikal Ramchandra Pimple
(deceased through heirs)
- 1A. Ramchandra Balu Pimple,
(deceased through his heirs are
On record as 1B to 1D.)

- 1B. Rajesh Ramchandra Pimple,
Aged 38 Years,
Both R./o Post Dedale,
Post Bawade, Tal. Dahanu,
District: Palghar – 401 103.
Now R/at Somnath Paradise
Shiv Jyoti Building, D-2,
1st floor, Room No.103,
Boisar, Bhandar Wada
Tal. Palghar, District: Palghar
Pin – 401 103.
- 1C Sou. Archana Anil Sankhe,
Aged 37 Years,
R/at. Ameya Park, Ganesh Kripa
Building, 1st floor, Room No. 106
Boisar Nawapur Road, Boisar,
Tal. Palghar, District: Palghar
Pin- 401 103.
- 1D. Sou. Bhavana Sagar Dandekar,
Aged 32 Years R/at. Post Chinchani,
Tal. Dahanu, District : Palghar.
Pin- 401 103.
2. Smt. Sushila Dattatraya Sankhe,
Age 35 Years,
Residing at Dedale, Post Vavade,
Tal. Dahanu, District: Thane.
Pin- 401 103.
3. Smt. Anandibai Janardhan Patil,
(since deceased he heirs already
on record as No.2)
4. Shri Narottam Madhav Patil,
Since deceased through his heirs
& legal representatives,
- 4A. Shri Rupesh Narottam Patil,
Aged 32 Years,
At Bosar Khaira Phatak (Near)
Tal. Palghar, District: Thane.
Pin-401 103.

- 4B. Smt. Archana Bhushan Wade,
R/at. C-75, Miraj Residency,
Jankalyan Nagar, Malad (W),
Mumbai -95.
5. Smt. Shinwaribai Balkrishna Patil
Alias Vatsalabai Balkrishna Sankhe
Now deceased by her legal
Representative by her heirs,
- 5a. Kishor Balkrishna Sankhe,
R/o. Gurunanak Apartment,
Kacheri Road, Palghar,
District: Thane. 401 404.
- 5b. Pravin Balkrishna Patil alias
Sankhe, residing at Om sai, II
Vajali Pada, Devisha Road,
Palghar, Tal. Palghar,
District: Thane. 401 404.
- 5c. Vikas Balkrishna Sankhe,
Residing at Ulhas Shanti Nagar
Sector 1-A, 57/103,
Mira Road (E)
District : Thane - 401 107.
- 5d. Smt. Meena Dinesh Sankhe,
Residing at Vanjar Wada,
Boisar (E), Post Boisar,
Tal. Palghar, District: Thane.
Pin - 401 501.
- 5e. Smt. Sanju Radhunath Sankhe,
Residing at Parnali,
Post Delwadi, Tal. Palghar,
District: Thane.
Pin - 401 502.
6. Smt. Dwarkabai Madhukar Patil
Age 33 Years,
R/o. C/o. Pradip Madhukar Patil
Swami Vivekanand Nagar,
Atharva Ved Building,
Room No.12, Building No.3,
Boisar (W), Navapur, Tal. Palghar,

District: Palghar - 401 501.

- 7. Khandu Waman Patil,
Since deceased through his
Legal heirs
- 7a. Kalpana Khandu @ Khanderao Patil,
Since deceased, her heirs are
Already on record as 7b to 7d
- 7b. Bhushan Khandu @ Khanderao
Patil,
- 7c. Ravi Khandu @ Khanderao Patil
- 7d. Smt. Sharmila Narendra Patil
Nee Sharmila Khandu @
Khanderao Patil, 7a to 7d R/at. B-13/8,
Estate Apratment, Near Gurudwara
Saibaba Nagar, Borivali (W),
Mumbai -400 092.
- 8. Smt. Manjulabai Gopal Sankhe,
Since deceased through her
heirs & legal representatives,
- 8a. Smt. Karuna Nee Sudha Kisan
Vade, Age. Adult,
Occupation: Household,
R/o. 'B' Wing, 4th floor,
Smeet Building Oswal Silver
Avenue, Boisar (W),
District: Palghar 401 501.
- 8b. Ramchandra Gopal Vade,
Since deceased through his heirs
& legal representatives,
- 8b(i) Ankush Ramchandra Vade,
- 8b(ii) Smt. Minaxi Rachandra Vade,
- 8b(iii) Reena Narendra Sankhe,
Residing at Vengani, Tal. &
District: Palghar - 401 503.

- 8b(iv) Suvarna Dipak Sankhe,
Residing at Parnali, Post Kurgaon
Tal. & District: Palghar.
Pin – 401 504.
- 8c. Ganesh Gopal Vade,
Adult Occupation: Agriculture,
Residing at & Post Vengani,
Tal & District: Palghar.
Pin – 401 501.
- 8d. Mrs. Manisha Sunil Sankhe,
Adult, Occupation : Househod,
- 8e. Mrs. Mangala Pravin Sankhe,
Adult, Occupation: Household,
8(d) & 8(e) R/at. Morekuran Post
Depoli, Taluka and District
Palghar – 401 504.
- 8f. Mrs. Sharmila Sanju Patil,
Adult, Occupation: Household,
Residing at Post Phophran,
Post Akarpatti, Tal. Palghar,
District: Palghar – 401 501.
9. Shri. Damodar Waman Patil,
Since deceased by his heirs and
legal Representatives,
- 9a. Smt. Kusum Damodar Patil,
- 9b. Dilip Damodar Patil,
- 9c. Kishor Damodar Patil,
- 9d. Vinayak @ Nilesh Damodar Patil,
- 9e. Suryakant Damodar Patil,
All R/o. Dedale, Post Bavade,
Tal. Dahanu, District: Palghar-401 103.

10. Shri. Vasudeo Waman Patil,
Since Deceased through heirs and
Legal representatives,
- 10a. Smt. Vatsala Vasudeo Patil,
- 10b. Arun Vadudeo Patil,
- 10c. Sandeep Vasudeo Patil,
Nos.10A to 10C R/o. Post Bavade,
Via Vangaon, Tal. Dahanu,
District: Palghar-401 103.
- 10d. Bharati Ashok Lahane,
Residing at Kalowali (Adivasi Pada),
Post Bavade, Tal. Dahanu,
District: Palghar - 401 103.
- 10e. Mangala Sunil Pimpale,
R/at. Post Maswan,
Tal. & District: Palghar-401 506.
- 10f. Manisha Pravin Pimpale,
Residing at Kumbavali, Near Z.P.
School Marathi, Kumbavali
Murbad Road, Post Nandgaon,
Tal. Palghar, District: Palghar-401 506.
11. Javalibai Waman Patil,
Now deceased by her legal heirs
& legal representatives,
- 11a. Khandu Waman Patil,
Since deceased his heirs are
Already record on as Resp. No.7a to 7c.
- 11b. Damodar Waman Patil,
Since deceased his heirs are
Already on record as Resp. No.9a to 9c.

11c. Vasudeo Waman Patil,
Since deceased his heirs are
Already on record as Resp. No.10a to 10f. ...Respondents

Mr. Prathamesh Sarang a/w. Mr. Aadiya Tiwari and Mr. Kaivalya
M. Raul i/by Mr. Samir Vaidya for the Applicant/Appellant.

CORAM : JITENDRA JAIN, J.

DATE : 15th SEPTEMBER, 2023.

P.C.

. This interim application is taken by the
Applicant/Appellant for following reliefs:-

“(a) that this Hon’ble court be pleased to condone the delay of 76 days and be pleased to restore the Civil Application (St.) No.27172 of 2018 in Second Appeal No.664 of 1992 and be pleased to hear the Second Appeal on its own merits in the interest of justice.”

2. Therefore, the instant interim application is for
restoration of Civil Application (Stamp) No.27172 of 2018.

3. The Civil Application (Stamp) No.27172 of 2018 was
taken out by the Applicant/Appellant for the following relief:-

“(a) That this Hon’ble Court be pleased to permit the Applicants to implead Respondent Nos.4a and 4b as legal heirs and representatives of the deceased Respondent No.4 and be further pleased to allow the amendment in terms thereof.”

4. The Civil Application (Stamp) No.27172 of 2018 was
dismissed on 13th November 2019 as rejected case since Advocate

for the Applicant did not remove the office objections within the stipulated time. In the said office note, it is also mentioned that Second Appeal No.664 of 1992 is already dismissed.

5. Second Appeal No.664 of 1992 was dismissed for the first time on 1st September 2016 on the ground that none appeared for the Appellant. The Applicant filed a Civil Application No.1715 of 2016 for setting aside the order of dismissal dated 1st September 2016. On 28th July 2017, Civil Application No.1715 of 2016 was allowed and the second appeal was restored with a direction that the office objection shall be removed within a period of one week and the appeal be placed for admission on 14th August 2017. In the said order, this Court also stated that no steps in the execution proceedings shall be taken. Thereafter, on various occasions, the office objections were not removed and, therefore, on 18th July 2018, Second Appeal No.664 of 1992 was dismissed by the Registrar's order. As of today, the Second Appeal No.664 of 1992 stands dismissed and the same is not restored till today.

6. The Applicant/Appellant's Advocate moved a praecipe on 3rd July 2023 for circulating present Interim Application No.3880 of 2019 and the said circulation was granted on 26th July 2023. On 15th September 2023, Interim Application No.3880 of 2019 seeking restoration of Civil Application No.27172 of 2018

was listed for hearing.

7. Mr. Prathamesh Sarang, Advocate from the office of Advocate Mr. Samir Vaidya appeared and requested that the application be allowed in terms of prayer clause (a). The Advocate also prayed that the execution proceedings shall be stayed by relying upon paragraph 5 of the order of this Court dated 28th July 2017. This prayer for stay was made on the premise that second appeal is alive.

8. After the hearing was over, I perused all the records and found that the Second Appeal No.664 of 1992 itself stood dismissed, vide Registrar's order dated 18th July 2018 and the same is not restored till today. It is also important to note that the Advocate for the Applicant/Appellant was aware about this fact as evident from the praecipe dated 3rd July 2023 seeking circulation of the present interim application, wherein the Applicant/Appellant's Advocate himself has stated the reason for urgent circulation on the ground that the Applicant/Appellant seeks to restore the second appeal. Therefore, one cannot say that on 15th September 2023, when the present interim application was listed, the Applicant/Appellant's Advocate was not aware that the Second Appeal No.664 of 1992 is already dismissed and, therefore, the Advocate's request to stay the

execution proceedings when second appeal stood dismissed was improper. The execution proceedings could be stayed by this Court only if the Second Appeal No.664 of 1992 was in existence on 15th September 2023. The Advocate did not point out to the Court that the Second Appeal No.664 of 1992 was already dismissed, on 18th July 2018 which fact was within the knowledge of the Advocate as evident from the praecipe dated 3rd July 2023.

9. Since the Second Appeal No.664 of 1992 is already dismissed in 2018 and the said dismissal stands today as it is, the present application made for restoration of Civil Application No.27172 of 2018, which civil application as per the prayer clause of the said civil application, is only for impleading legal heirs of the Respondents and there being no prayer for restoration of the second appeal in Civil Application No.27172 of 2018 or in Interim Application No.3880 of 2019, the present Interim Application No.3880 of 2019 stands dismissed.

10. At this stage, I may point out that there is a general tendency of the seniors sending the juniors to the Court without briefing the juniors properly and without being made aware of all the facts about the matter. The juniors too without going through all the relevant papers of the matter appears before the Court on the presumption that he is supposed to know only the facts

recorded in the interim application. In my view, this course of action is not proper and nor good both for the seniors as well as the juniors. The juniors are put in a very embarrassing position when the correct facts are pointed out by the Court and which may lead the Court to believe that they are being misled. The reputation of the junior is at stake at this point of time, which in the long run would not be good for his/her carrier. It is also the responsibility of the seniors that when they recruit the juniors, they take up the responsibility of moulding the career of the juniors and, therefore, the seniors too should brief the juniors properly and give time to the juniors to go through all the papers, so that the juniors are well trained and prepared while appearing before the Court. I hope that this advice by the Court if followed by the seniors and the juniors would go a long way in the discharge of the duties, which the Advocates owe as an officer of the Court.

11. In view of above, Interim Application No.3880 of 2019 is dismissed, since no steps have been taken for restoration of Second Appeal No.664 of 1992, which was dismissed for non-removal of office objections in 2018 and the dismissal order stands today as it is.

[JITENDRA JAIN, J.]